

**SITUATION  
OF LESBIANS, GAYS, BISEXUALS,  
AND TRANSGENDERS  
IN THE RUSSIAN FEDERATION**

This publication is carried out with support of the Program of Small Grants of Embassy of the USA in the Russian Federation. The Moscow Helsinki Group bears full maintenance responsibility of the given publication which cannot be regarded as opinion of Embassy of the USA or the American Government.

Authors:

Igor Kochetkov (Petrov), Russian LGBT Network  
Xenia Kirichenko, master of laws, Russian LGBT Network

# TABLE OF CONTENTS

## INTRODUCTION

5

### 1. LEGAL GUARANTEES OF PROTECTION AGAINST PROSECUTIONS AND DISCRIMINATION IN CONTEXT OF SEXUAL ORIENTATION AND GENDER IDENTITY

7

### 2. DISCRIMINATION AND VIOLATION OF THE RIGHTS OF HOMOSEXUALS AND TRANSGENDERS

22

### 3. CONCLUSIONS AND RECOMMENDATIONS

58

### RECOMMENDATION CM/REC(2010)5 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON MEASURES TO COMBAT DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION OR GENDER IDENTITY

63



# INTRODUCTION

This report is the result of the specialized monitoring of discrimination based on sexual orientation and gender identity in the Russian Federation carried out by the Moscow Helsinki Group in cooperation with the Russian LGBT Network in 2007–2008. This is the first specialized study of the legal situation of gays, lesbians, bisexuals, and transgenders (LGBT community) in Russia.

A long time ago, the international community, which Russia is a part of, has recognized that all people born free and equal in their dignity and rights. At the same time, there are still social groups that are systematically excluded from the principles of respect of human dignity and universality of human rights by the society and state. LGBT community, which includes people with sexual orientation and/or gender identity different from that of the majority of population, is one of such groups.

Along with race, national and religious affiliation, gender and other characters, sexual orientation and gender identity are inherent elements of everyone's dignity and personality and, thus, should not be a ground for discrimination or violation of rights. The society and the state must do their best to provide people with any sexual orientation and gender identity with equal opportunities and freedom. This is the only approach that corresponds to the modern understanding of the principle of universality, indivisibility, interdependence, and interconnection of human rights.

In modern Russia, as well as in other countries of the world, violations of human rights and discrimination based on different grounds are wide spread. Xenophobia, intolerance towards minorities is a common problem for the entire society, and homophobia is just one of its parts. However, homophobia-related crimes, violations of rights, and discrimination are not only wide spread, but also are kept secret by authorities, media, and public opinion leaders. LGBT community in our country is still “invisible” and “unnamed.”

This is the reason for carrying out this social study of the legal status of LGBT community in Russia. The existing problems should not be kept secret; on the contrary, they must become a subject of public discussions with the participation of authorities and public opinion.

It would be impossible to carry out the first such study in Russia without the joint efforts of two organizations—Moscow Helsinki Group and Russian LGBT Network.

Moscow Helsinki Group is the senior human rights organizations in Russia founded in 1976 in Moscow. Today, MHG is a multidisciplinary human rights organization and, first of all, a resource center for hundreds of non-governmental organizations, providing them with organizational, information, educational, and other support.

Monitoring of human rights observance is one of MHG fields of activity. The all-Russia monitoring of human rights was possible due to the model provided by MHG. The situation in the field of human rights is monitored by joint efforts of Moscow and regional human

rights organizations. A permanent network of human rights organizations with the experience in human rights monitoring was created by 2001. Regional human rights organizations have adopted the practice of presenting reports on human rights in their regions. Starting with 1999, MHG issues the annual report “On Human Rights in the Russian Federation.” Starting with the same year, besides the monitoring covering the entire range of human rights, MHG started carrying out studies by separate groups of human rights.

In 2006, MHG established partnership relations with the Russian LGBT Network. As a result of this partnership, the 2007 “Human Rights in the Russian Federation” report included a special chapter “Discrimination Based on Sexual Orientation and Gender Identity”<sup>1</sup>.

Russian LGBT Network was created in 2006. Within three years of its existence, it has transformed from an initiative group of several activists into an interregional public movement with 13 regional offices (Saint Petersburg, Tyumen, Pskov, Tomsk, Kemerovo, Omsk, Arkhangelsk, Perm, Volgograd oblasts, Khabarovsk and Krasnoyarsk kraia, the Republic of Karelia, and Tatarstan). A number of representatives of the Movement work in other regions as well.

The Russian LGBT Network aims at eliminating all forms of discrimination based on sexual orientation and gender identity, disseminating the idea of tolerance in the Russian society, as well as encouraging gays, lesbians, bisexuals, and transgenders to take an active part in social life.

Monitoring of violations of human rights and discrimination against representatives of LGBT community is one of the organization’s fields of activity. In addition, the Russian LGBT Network provides legal and psychological assistance, educates and consults leaders of regional LGBT organizations, carries out information and other activities aimed at creating a society without discrimination and segregation in Russia.

*Executive Director of Moscow Helsinki Group,*

*N. A. Tagankina*

*Chairman of the Interregional Public Movement “Russian LGBT Network,”*

*I. V. Kochetkov (Petrov)*

---

<sup>1</sup> Human Rights in the Russian Federation. M. 2008, p. 356–366.

# **1. LEGAL GUARANTEES OF PROTECTION AGAINST PROSECUTIONS AND DISCRIMINATION IN CONTEXT OF SEXUAL ORIENTATION AND GENDER IDENTITY**

## **1.1. LEGISLATION OF THE RUSSIAN FEDERATION**

### **1.1.1. Antidiscrimination Provisions of the Constitution of the Russian Federation and State Obligations to Protect Citizens against Discrimination Based on Sexual Orientation**

Of course, the main provisions stipulating the necessity to respect differences and to protect rights and interests of citizens, at least when they do not intrude on other people's rights and interests, are enshrined in the Constitution of the Russian Federation. It is said that Russia is a democratic law-bound state (art. 1), a social state (art. 7), where human rights and freedoms are the supreme value, and the recognition, observance and protection of such rights and freedoms shall be the obligation of the state (art. 2). Important provisions are also stipulated by art. 13 (recognition of ideological diversity, equality of public associations), 14 (official separation of religious associations and the state).

The main norm establishing the antidiscrimination principle is included in art. 19 of the Constitution of RF. It speaks about equality based on three aspects: a) equality before the law and court; b) equality of human and civil rights and freedoms, regardless of "sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, *and also of other circumstances*" (italics are ours—*Author*); c) equality of rights of men and women, which is emphasized apart.

Thus, although the constitutions of a number of European states already contain provisions expressly prohibiting discrimination based on sexual orientation, the Constitution of RF has no express reference that would prohibit limitation of the citizens' rights and interests based on their sexual orientation. However, the list of prohibited discrimination grounds is open, and the unmentioned grounds fit in "other circumstances," which means that discrimination based on sexual orientation is prohibited as well <sup>1</sup>. Unlike a number of documents, including international ones, which complete the list of prohibited discrimination grounds by the phrase "and other social factors" or "membership of another social group," the Constitution of RF uses a more favorable term, i. e. "other circumstances." Of

---

<sup>1</sup> Leading theorists in constitutional law also mention this fact. E. g. see: The Constitution of the Russian Federation: Clause-by-Clause Scientific and Practical Commentary / composite authors lead by O. E. Kutafin // [http://constitution.garant.ru/DOC\\_3866952.htm#sub\\_para\\_N\\_2000](http://constitution.garant.ru/DOC_3866952.htm#sub_para_N_2000).

course, the statement that homosexuality is a discrimination ground of social nature can be criticized, placing it among biological instead of social grounds. The issue of social nature of homosexuality can arise in the Russian context in connection with the possibility of limiting the rights based on homosexuality. The point is that human rights and freedoms may, in fact, be limited, but only in compliance with the federal law and in order to protect morals, health, etc. However, all forms of the limitation of rights based on social background, race, nationality or religion are prohibited. And here there is a problem: whether sexual orientation can be considered a variety of social backgrounds of a citizen. And the answer to this question can be found not in jurisprudence, but in related sciences—sociology, psychology, etc.

The social nature of homosexuality matters also in other, more specific issues. Thus, the Constitution of RF prohibits propaganda or agitation inciting *social*, racial, national or religious hatred and strife (art. 29). Since the Russian legislation does not contain special norms prohibiting homophobic actions, and the Constitution has a direct effect, it is particularly important to prove the social nature of LGBT issues.

Besides, according to the analysis of international sources, equality of rights of men and women can also matter in legal regulation of the situation of people with non-traditional sexual orientation (access to assisted reproductive technologies, rights and obligations of people who undergo sex change operations, etc.).

No labor discrimination is allowed (art. 37 of the Constitution of RF). Art. 38 speaks about state protection of the family, and neither the Constitution nor the Family Code of RF describes the family. Moreover, while provisions of the family legislation cover a specific range of subjects with a special status recognized by the state (mother, child, husband, etc.), and, thus, the family protected by the family legislation is limited by subject composition, the Constitution of RF contains no signs of a family, that is why any family (including homosexual partners) must be protected by the state.

Speaking about constitutional norms enshrining the fundamentals of the legal status of Russian citizens in the context of LGBT, it is impossible to omit the main procedural mechanism of observing the Constitution—the activity of the Constitutional Court of the Russian Federation (hereinafter referred to as CC RF). CC RF authority, order of formation, and activity are set out in the Constitution of RF, as well as in the Federal Constitutional Law “On the Constitutional Court of the Russian Federation.” In particular, CC RF is in charge of solving cases of compliance of the legislation of RF, subjects of RF, as well as bylaws with the Constitution of RF, examining citizens’ complaints about violation of constitutional rights and freedoms of citizens. By the present moment, CC RF has examined two complaints related to non-observance of human rights of homosexuals. In both cases the final decision was not to admit the complaints to examination, and a number of conclusions that motivated such decisions made it possible to understand the official approach of Russian authorities to the issue of LGBT community.

The first case was related to the refused registration of the human rights organization “Commonwealth of Homosexual Youth “Gayzer”<sup>1</sup>. Having examined the presented materials, CC RF came to the conclusion that the Federal Law “On Public Associations” did not violate the Constitution of RF. According to CC RF, the right to association guaranteed to citizens by

---

<sup>1</sup> The Decision of the Constitutional Court of RF of 15 February 2005 No.49-O “to refuse admitting the complaint of the citizens Bogdanov Andrei Yevgenyevich, Maltsev Dmitrii Sergeyevich, and Syromolotov Mihail Yevgenyevich about violation of their constitutional rights by art. 23 of the Federal Law “On Public Associations” to examination // website of CC RF ([http://ksportal.garant.ru:8081/SESSION/S\\_\\_3ND6vsSK/PILOT/main.html](http://ksportal.garant.ru:8081/SESSION/S__3ND6vsSK/PILOT/main.html)).

the Constitution of RF implies the possibility, protected by the state, to create on a voluntary basis public associations to protect their interests and achieve common goals. The refusal itself to register a particular association made by a particular authority or official cannot imply unconstitutionality of the law, and CC RF is not in charge of verifying the legality of actions taken by the mentioned authorities or officials.

The second case represented the appeal against the provisions of the Family Code of RF, according to which in order to register a marriage a mutual free consent of a man and a woman was necessary <sup>1</sup>. E. Murzin and E. A. Mishin came to the Register Office with the application for marriage registration. The registration was refused, and the appeal against the refusal in general courts did not help. Murzin addressed to CC RF, considering that provisions of the regulatory acts governing those actions and the actions themselves violated their rights guaranteed by art. 17–19 and 23 of the Constitution of RF <sup>2</sup>.

Having examined the complaint, CC RF came to the conclusion that the provisions of art. 1 and 12 of FC RF could not be seen as violation of constitutional rights and freedoms guaranteed by art. 17–19 and 23 of the Constitution of RF. CC RF gave two arguments: 1) according to international law and the Constitution of RF, one of the destinations of family is to give birth and bring up children; 2) there are national traditions of seeing a marriage as a biological union of a man and a woman. Finally, it is worth mentioning that CC RF pointed out the fact that the international law contained no provision obliging the state “to create conditions for propaganda, support, and recognition of same-sex partnerships, and the refused registration did not affect the level of recognition and guarantees provided for the rights and freedoms of the applicant as man and citizen in the Russian Federation.”

### **1.1.2. Analysis of the Russian Criminal, Administrative, Civil, and Family Legislation for Discriminatory Provisions, Gaps, and Guarantees of Protection of Rights of Sexual Minorities**

#### Criminal Legislation

##### *Criminal Liability for Homosexual Relations*

Criminal prosecution of homosexual relations is also characteristic of the national legislation. The Criminal Code of the Russian Socialist Federative Soviet Republic, in its initial version, contained material elements of “sodomy” crime (art. 121), according to which men found guilty of committing acts of sodomy were to be sentenced to 5 years in prison. Sodomy committed by physical violence, threats or abusing dependent position of the victim was punished even more severely than rape: up to eight years of imprisonment. Sodomy committed

<sup>1</sup> The Decision of the Constitutional Court of RF of 16 November 2006 No. 496-O “to refuse admitting the complaint of the citizen Murzin E. about violation of his constitutional rights by p. 1 of art. 12 of the Family Code of the Russian Federation // website of CC RF ([http://ksportal.garant.ru:8081/SESSION/S\\_\\_3ND6vsSK/PILOT/main.html](http://ksportal.garant.ru:8081/SESSION/S__3ND6vsSK/PILOT/main.html)).

<sup>2</sup> According to art. 17, recognition and guarantees in the Russian Federation shall be provided for the rights and freedoms of man and citizen according to the norms of international law and the Constitution itself. Art. 18 states that the rights and freedoms of man and citizen shall be directly operative, determine the essence, meaning and implementation of laws, the activities of public authorities, and shall be ensured by the administration of justice. Art. 19 establishes non-discriminatory principles. And finally, art. 23 speaks about inviolability of private life.

with regard to underage (without violence) was also punished more severely than a heterosexual sexual act with a minor: up to eight years of imprisonment.

After the breakup of the Soviet Union, democratic transformations in Russia have led to reforms in the criminal legislation. The necessity to decriminalize nonviolent homosexuality was emphasized at the official level in 1991<sup>1</sup>, and art. 121 of the Criminal Code of RSFSR was amended in 1993: only sodomy committed by violence or threats, with regard to a minor, or abusing dependant position or helpless state of the victim was considered a crime, and the maximum sentence for this crime was reduced to seven years.

Provisions of the current Criminal Code of RF 1996 can be characterized as a step forward to admitting homosexual relations<sup>2</sup>:

1) The special part of the Criminal Code of RF, which contains specific constituent elements of crimes, does not consider same-sex sexual relations themselves a crime;

2) Despite the distinguishing between two different components of crime—rape (heterosexual sexual act, art. 131) and violent sexual actions (including sodomy and lesbian acts, art. 132)—the liability for both crimes is identical (both of them can be sentenced to 3–6 years of imprisonment in case of non-aggravation and 4–10 years or 8–15 years in case of aggravating elements, which are also formulated in the same way);

3) The Criminal Code of RF considers together and equalizes the crimes that consist in compulsion to perform sexual actions (art. 133) and sexual relations or other sexual actions with a person who has not attained 16 years of age (art. 134), regardless of their homosexual or heterosexual nature (i. e. the age of consent to heterosexual and homosexual relations is equal), and the liability in both cases is stipulated within the same framework.

However, since the passing of the Criminal Code of RF, a number of political figures have made attempts to amend the criminal legislation and introduce criminal liability for propaganda of homosexual relations, but none of the draft laws was adopted<sup>3</sup>.

The draft law “On Supplementing the Criminal Code of the Russian Federation with the Provision Stipulating Criminal Liability for Propaganda of Homosexuality” repeatedly proposed by the MP A. V. Chuiev within 2003–2006 in several versions is of particular interest. This draft law was meant to establish criminal liability for “propaganda of homosexuality within public appearances, public works or mass media, including manifested through public demonstration of homosexual way of life and homosexual orientation” punished by deprivation of the right to hold specific positions or perform specific activities.

It is worth mentioning the stand of the Government of RF on the amendments proposed by Chuiev, expressed in the official comments to the draft law:

“Since homosexuality itself is not a criminally punishable act, its propaganda cannot be considered a socially dangerous infringement of the object of criminal-legal protection. The proposed supplement contradicts the provisions of article 29 of the Constitution of the Russian Federation (limitation of the right to express one’s views and convictions), as well as articles 8, 10, and 14 of the Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms, stipulating the right to respect for private and family life,

<sup>1</sup> About the Concept of the Court Reform in the RSFSR: The Ordinance of the Supreme Soviet of RSFSR of 24 October 1991 // Records of SS RSFSR—1991—No. 44—Art. 1435.

<sup>2</sup> This approach is also confirmed by explanations of the Supreme Court of RF, see: The Ordinance of the Supreme Court of RF of 15 June 2004 “On Jurisdiction over Crimes Stipulated by Art. 131 and 132 of the Criminal Code of the Russian Federation” // Rossiiskaya Gazeta—2004—29 June.

<sup>3</sup> The analysis covered texts of the draft laws and materials to them placed on the website of the State Duma of RF (<http://www.duma.gov.ru/faces/lawsearch/search.jsp>).

freedom of expression and prohibition of discrimination” (comments of the Government of RF of 24 November 2003).

“In order to ensure protection of sexual freedom and sexual immunity of both men and women the legislator has established criminal liability for sexual offences, including for sodomy and lesbian acts, accompanied exclusively by violence and threat of violence. In its turn, such actions committed by mutual consent of the parties represent neither material elements of a crime, nor an administrative offence. In this context, it is impossible to establish liability for propaganda of homosexuality in the absence of liability for homosexuality itself. Moreover, this proposal contradicts the Law of the Russian Federation “On Mass Media,” particularly article 4, prohibiting only dissemination of information, dissemination of which is prohibited by federal laws” (comments of the Government of RF of 11 December 2003).

#### *Aspects Related to Punishment for Homophobic Crimes*

It is worth mentioning that art. 63 of the Criminal Code of RF, stipulating the list of circumstances aggravating punishment, distinguishes commission of a crime by reason of national, racial, or religious hatred or enmity, but homophobic crimes are not considered committed in aggravating circumstances. The same can be said about material elements of murder (art. 105), intentional infliction of a grave injury (art. 111), intentional infliction of injury of average gravity (art. 112), torture (art. 117), vandalism (art. 214), outrages upon bodies of the deceased and their burial places (art. 244). According to art. 357 (“Genocide”), “actions aimed at the complete or partial extermination of a national, ethnic, racial or religious group as such by killing its members, inflicting grave injuries to their health, forcible prevention of childbirth, forcible transfer of children, forcible resettlement, or by any other method of creating living conditions meant for the physical destruction of the members of this group” constitute a crime.

A number of articles of the Criminal Code of RF contain a large list of prohibited discrimination grounds. However, the issue of ensuring non-discrimination based on sexual orientation or gender identity again turns on the establishment of their social nature. Thus, art. 136 of the Criminal Code of RF contains a special element of a crime—“**Violation of the Equality of Human and Civil Rights and Freedoms**”—which is considered **discrimination**, i. e. “violation of the rights, freedoms and legal interests of man and citizen based on sex, race, nationality, language, origin, property or official status, place or residence, attitude to religion, convictions, or affiliation with public associations or any *social group*.” Art. 282 (“Incitement of Hatred or Enmity, as Well as Abasement of Human Dignity”) stipulates punishment for commitment of the corresponding deeds against a person or a group of persons on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any *social group*. Art. 282.1 (“Organizing an Extremist Community”) stipulates creation of an extremist community, participation in it, as well as the leadership of such an extremist community as the objective side of the corresponding offence. At that, the article defines extremist group as “a group of persons organized for the preparation or for the performance of extremist crimes, with the motives of the ideological, political, racial, national or religious hatred or enmity, as well as on the motives of hatred or enmity towards any *social group*” (italics are ours—*Author*).

Not only substantive, but also procedural aspects of crimes and punishments for them require a separate consideration.

In democratic countries, the recognition of the importance of close relations between intimate persons is reflected in the rules of non-witnessing against such persons. However, the Criminal Procedure Code of the Russian Federation appears to be discriminating in this sense due to the following reason. Art. 56 of the Criminal Procedure Code of the Russian Federation, which provides for the basis of the legal status of a witness as a participant in the criminal proceedings, mentions among their rights the right to refuse witnessing against self, their spouse and other close relatives, listed quite exhaustively in p.4 art. 5 of the Code. According to this norm, close relatives include spouses, parents, children, adoptive parents, adoptive children, siblings, grandparents, and grandchildren. Obviously, the partner of a homosexual, against whom a criminal proceeding is initiated, does not have the right to refuse witnessing against them. S/He can be recognized only a close person defined in p. 3 art. 5 of CPC RF (“persons who have an affinity with the victim or witness, other than close relatives and relatives, as well as persons, whose life, health, and well-being are dear to the victim or witness by virtue of existing personal relations”). In such quality the partner has the right to expect certain security measures to be taken in order to protect them in case of threats (art. 11 p. 3, 166 p. 9, 186 p. 2, 241 p. 2 pp. 4, 278 p. 5 of CPC RF).

Art. 116 of the Criminal Enforcement Code of the Russian Federation 1996 considers sodomy and lesbian acts to be gross violations of the established order of sentence service by those condemned to imprisonment, while mentioning nothing about heterosexual relations. This norm is concretized by other acts. Thus, for example, the list of convicts on preventive file, along with those getting ready to abscond from prison, inclined to using, selling or purchasing drugs, etc., includes “persons inclined to sodomy (lesbian acts)”<sup>1</sup>.

### Administrative Legislation

The main provisions of the administrative legislation related to ensuring civil rights in connection with sexual orientation and gender identity are related to registration of acts of civil status, the passport system, as well as with the degree of ensuring the rights of transgenders who have changed their sex (according to the practice of the European Court as well).

The previous legislation provided for the possibility to change records indicating sex attribute of the citizen, but hermaphroditism was the only ground for that<sup>2</sup>. The current legislation not only stipulates the possibility in principle to document the changed sex attribute in case of surgical sex transformation by transsexuals, but also specifies the issue-related procedural provisions. Some of the specific examples could be:

- The Federal Law “On Acts of Civil Status” 1997, which provides for the possibility to rectify acts of civil status based on the document confirming sex transformation issued by a health institution (art. 70), at the same time changing the name of the citizen (art. 60) and issuing a new birth certificate;

<sup>1</sup> The Order of the Ministry of Justice of the Russian Federation of 30 December 2005 “On Approval of the Regulations on the Group of Convicts of the Federal Penitentiary Service” (see: [http://www.allbusiness.ru.BPravo/DocumShow\\_DocumID\\_79954.html](http://www.allbusiness.ru.BPravo/DocumShow_DocumID_79954.html)).

<sup>2</sup> The Order of CM USSR of 10 December 1976 No.1006 “On Approval of the Main Provisions Establishing the Order of Changing, Recovering, and Annulling Records of Acts of Civil Status, Order and Period of Keeping Registers: Approved by the Order of CM USSR of 10 December 1976” (see: <http://infopravo.by.ru/fed1991/ch03/akt15582.shtm>).

- The Provision on Passport of the Citizen of the Russian Federation of 8 July 1997<sup>1</sup>, according to which sex transformation is a ground for passport replacement;
- Administrative Regulations of the Federal Migration Service on provision of the state service related to issue, replacement and fulfillment of the state duty to keep records on passports of the citizen of the Russian Federation, attesting identity of the citizen of the Russian Federation on the territory of the Russian Federation, approved by the Order of MOI RF of 28 December 2006<sup>2</sup>, according to which in case of sex transformation it is necessary to present the passport to be replaced and the name change certificate in order to receive a new passport;
- The Order of the Federal Fund of Compulsory Health Insurance of 15 August 2000 No. 67 “On Introduction of the Unified System of CHI Health Insurance Police Number Formation”<sup>3</sup>, according to which YYYYMMDDNNNN facets of the health insurance police number remain unchanged within the entire life of the citizen (except for cases of sex transformation).

Thus, the Russian legislation provides for the main grounds establishing the possibility and order of sex transformation. However, there are certain gaps there: art. 70 of FL “On Acts of Civil Status” mentions not just a document confirming sex transformation issued by a health institution, but a standard document. Such standard form has not been approved yet, and there are situations when registry offices do not recognize the document issued by a health institution as a ground for modifying the act of civil status. Thus, in order to use their rights (formally guaranteed by the legislation) citizens have to apply to court. In their turn, courts deliver a judgment on establishing the legal fact of sex transformation, which is not quite an unambiguous solution from the viewpoint of legal theory and legislative practice<sup>4</sup>.

#### Civil Legislation

The civil legislation is characterized, in general, by gender neutrality, as well as by legal unimportance of the family-legal status of the person. However, there are several exceptions, which are of some interest in the context of ensuring civil rights in connection with sexual orientation and gender identity.

#### Contractual Law

The Civil Code of RF 1994 stipulates the freedom of agreement (art. 1) as one of the civil legislation principles, which implies the possibility to conclude a contract, both stipulated and unstipulated by legal acts (art. 421). Since there are no family-legal relations between homosexual partners or parents, as it will be shown below, they can correct the existing deficiencies by concluding similar contracts. These contracts can regulate property rights related

<sup>1</sup> See: <http://www.fmsrf.ru/document.asp?did=186>.

<sup>2</sup> See: Rossiiskaya Gazeta—2007—17 February—URL: <http://www.rg.ru/2007/02/17/reglament-pasport-dak.html>.

<sup>3</sup> The Order of the Federal Fund of Compulsory Health Insurance of 15 August 2000 No.67 “On Introduction of the Unified System of CHI Health Insurance Police Number Formation” (see: [http://www.businesspravo.ru/Docum/DocumShow\\_DocumID\\_81940.html](http://www.businesspravo.ru/Docum/DocumShow_DocumID_81940.html)).

<sup>4</sup> See: Shelutto M. L. Conditions and Family-Legal Consequences of Birth Certificate Rectification in Case of Sex Transformation // Issues of Civil, Family, and Housing Legislation: Collected Articles / ed. by V. N. Litovkin—M.: Gorodets, 2005—P. 76.

to jointly acquired property, mutual support, but not personal non-property rights (such as, for example, parental rights).

### Housing Law

The Housing Code of RF 2004 is the main source of housing law. Like the family legislation, it forms the legal notion of the family, defining its subject composition; but unlike the family legislation, the determinant attribute of family membership is cohabitation and self-identification and not the state registration. Thus, family members of the dwelling space owner and tenant have special rights. The first case is regulated by art. 31<sup>1</sup>, according to which spouses, children, and parents that cohabit with the dwelling space owner in that dwelling space are considered their family members. Other relatives, disabled dependants, and *in exceptional cases other citizens* can be recognized owner's family members, if they are moved in by the owner as their family members. Citizens recognized as family members of the dwelling space owner have the right to use and the obligation to maintain that space. When family relations between the owner and one of their family members are terminated, the latter must leave the dwelling space; however, if they do not have where to live, court can provide them with a possibility to live in the initial dwelling space for a certain period of time. Thus, homosexual partner can be protected as a family member of the owning partner only by court decision and not automatically.

### Succession Law

The Civil Code of RF distinguishes two institutions: succession by operation of law and succession by will. The latter is the innovation of the post-soviet legislation; this is why homosexual partner could not lay claim to property of the deceased partner within the soviet period. Today, the situation with succession by operation of law is practically unchanged: only the registered spouse can be the first category heir (art. 1142), and in the absence of a will the estate of the deceased person goes not to their partner, but to their relatives (even relatives of the fifth degree of kinship, stepfather, stepmother, stepson, or stepdaughter have the chance to get inheritance, art. 1145). The only exception could be when the partner of the deceased person was their disabled dependant (1148, 1149).

However, the situation with succession by will is completely different. The citizen has the right freely to dispose of property in case of death, to determine any person (including the homosexual partner) who will receive the property or its part (art. 1119).

### Family Legislation

According to O. Khazova, the Family Code of RF was initially developed with a high level of conservatism (unlike the already adopted Civil Code of RF, which was the symbol of a new economic order in Russia)<sup>2</sup>. This is why, it was natural that FC RF contained neither the institution of homosexual marriage (or leveling of gender aspect of the general institution of marriage), nor any other quasi-marital union recognized by the state (however, the latter

---

<sup>1</sup> Family members of the tenant are covered by art. 69 of HC RF.

<sup>2</sup> Khazova O. A. Five Years of the Russian Family Code: The First Results // The International Survey of Family Law: 2002 Edition / ed. by A. Bainham—Bristol: Jordans, 2002—P. 347–348.

is characteristic of not married heterosexual couples as well). According to O. Khazova, the Russian family law was always based on the idea of a marriage as a union of a man and a woman, which was always an implicit condition of a marriage. Despite the fact that FC RF has made no revolutionary changes in this regard, heterosexual aspect of marriage was intensified by formulation of the notion of marriage not only among general principles of family legislation<sup>1</sup>, but also in the norms dedicated to the institution of marriage<sup>2</sup>.

“Apparently, such provision shall be considered the legislator’s reply to the claims of same-sex couples regarding legalization of their unions,”—mentions one of the FC RF developers<sup>3</sup>.

### *Conjugal (Partnership) Relations*

Despite the fact that the Russian family legislation does not legalize same-sex marriages, the partners can create a regime for themselves similar to that of relations between registered partners. It is worth mentioning that legal relations between spouses are divided into non-property and property ones. The former are poorly regulated by legal norms (because, for example, the provision on equality of spouses in the family, their mutual moral support is of declarative nature and cannot be enforceable), the right to surname being the only exception (the spouses may take a surname of one of them as a common surname, add to their own surname that of the other spouse, or retain their own pre-marriage surname). In this regard, same-sex couples have certain prospects as well, because the legislation on acts of civil status allows anyone to change their surname without conditioning this right by certain reasons.

As far as property relations of the spouses are concerned (with regard to conjugal property, as well as alimony relations), a similar legal regime can be created for same-sex couples by concluding civil law contracts on jointly acquired property or mutual material support (based on the above-mentioned principle of freedom of contract). These contracts will have legal effect, can be enforced in case of violation, but also imply certain negative aspects for the partners. First of all, the matter concerns the payment of alimony. The peculiarities of alimony obligations will not extend to maintenance agreements (which are of civil law nature only) concluded by same-sex partners, which, finally, can lead to violation of interests of one of the parties to such agreement. First of all, alimony payments are of strict personal nature, this is why the corresponding rights and obligations cannot be transferred under other agreements, cannot be inherited, mortgaged, etc. With regard to agreement on maintenance of one partner by the other, the interests of the partner who has initially agreed to support the other partner can be unprotected, when the property status of one or both of them changes afterwards. Secondly, a special, priority order of collection is established for alimony payments (thus, ensuring the interests of the persons with the right to maintenance). The specific measures include the following: individuals applying to court for alimony recovery are exempted from the state fee; top-priority writing off of

<sup>1</sup> P. 3 art. 1 FC RF stipulates: “The family relations shall be regulated in conformity with the principles of a voluntary conjugal union between *a man and a woman...*” (italics are ours—*Author*).

<sup>2</sup> Art. 12 FC RF “The Terms for Entering into a Marriage” stipulates that “to enter into a marriage, a voluntary consent of *the man and of the woman...* is necessary” (italics are ours—*Author*). The former Marriage and Family Code of RSFSR (art. 15), as well as the Fundamentals of Legislation of the USSR and the Union Republics on Marriage and Family (art. 10) used to mention the consent of “the persons entering into marriage,” not specifying their gender identity.

<sup>3</sup> Khazova O. A. *The New Family Code // The International Survey of Family Law: 1996 Edition* / ed. by A. Bainham—Hague; Boston; London: Martinus Nijhoff, 1998—P. 372.

amounts constituting alimony payments in case of insufficiency of funds in the account, as well as top-priority discharge of claims in case of bankruptcy and in general based on enforcement documents; suits for alimony can be filed at the place of residence of both the claimant and the respondent; a reduced term of court examination is stipulated for alimony cases—one month; there is a possibility to apply the respondent retrieval procedure; the amounts paid for alimony purposes cannot be collected based on enforcement documents, etc. Homosexual partner who has concluded a maintenance agreement will be deprived of all these benefits.

#### *Parent Relations*

Parenthood of same-sex partners is an even more complicated issue. Here it is necessary to distinguish between biological and social parenthood. In the first case, the matter concerns the use of assisted reproductive technologies, the legal regulation of which is considered below. As far as social parenthood is concerned (adoption, tutelage and guardianship), the following opinions can be formulated.

Despite the fact that same-sex couples are not allowed to adopt a child, the Russian legislation provides for the possibility of child adoption by one individual (both married and not married). At that, homosexuality itself cannot constitute a ground for refusal of adoption. However, any act of adoption should promote the child's interests, which, in their turn, are an estimated concept specified by the law enforcement body (tutelage and guardianship authority or court). Whether the corresponding body will consider that the interests of a child will be violated if s/he is brought up by a homosexual parent—is an open question, but the lack of tolerance in the Russian society towards homosexuals allows supposing that the answer will be positive. However, it is worth mentioning that any decision of the administrative body or court can be appealed against, including in the European Court of Human Rights, which, as it has been mentioned above, has already recognized the refusal of adoption based only on sexual orientation to be a violation.

In the context of the considered issue, such institutions as tutelage and guardianship, as well as adoptive family have certain peculiarities.

Before 1 September 2008, adoptive family was a unique phenomenon: despite the recognition of the registered marriage only, a civil partnership could be considered a family as well. Spouses, as well as individual citizens, without specifying their sex, sexual orientation, and mutual relations, could become adoptive parents. Thus, adoptive family could provide same-sex partners with a possibility to bring up a child together, being recognized their legal representatives.

However, a new Federal Law “On Tutelage and Guardianship”<sup>1</sup> has come into effect, which considers adoptive family to be a kind of tutelage or guardianship, as well as prohibits unmarried individuals to play role of adoptive parents. Nevertheless, the new legislation also presents signs of better ensuring of the rights and interests of homosexual parents. Despite the fact that the Russian legislation considers exclusively heterosexual parenthood to be a standard model of family, which implies that a child should have only one parent of certain sex at a given time, there is a possibility to appoint a specific person to be the child's

---

<sup>1</sup> The Federal Law “On Tutelage and Guardianship” of 24 April 2008 // Collection of Legislative Acts of the Russian Federation—2008—No. 17—P. 1755; The Federal Law “On Amendments to Certain Legislative Acts of the Russian Federation Related to Adoption of the Federal Law “On Tutelage and Guardianship” of 24 April 2008 // *ibid.*—P. 1756.

guardian. In other words, one of the partners, being the child's legal parent, can appoint the other partner to be the child's guardian when s/he is not able to fulfill their parental duties by themselves (e. g., in case of a long hospitalization, foreign trip, etc.), as well as in case the child is left without parental care for a long period of time (e. g., death, deprivation of parental rights, the legal parent is recognized being incapable). The tutelage and guardianship body can deviate from these guidelines only in favor of the child's interests, and the decision on the violation of the child's interests by homosexual orientation of the potential guardian can be appealed against in court, as it has been mentioned above.

Finally, transsexuals constitute a gap in the current Russian family legislation, because FC RF fails to provide for peculiarities of parent and matrimonial legal relations of such persons. Thus, even despite surgical sex transformation, modification of sex attribute in birth certificate and passport, marriage certificate and birth certificate of their child, transsexual will have the status corresponding to their previous sex attribute.

V. Jirinovski in his draft law "On Paternity" has made an attempt to solve the issue of parenthood of people who have changed their sex (in particular, it was proposed to introduce the following norm: "Obligations to maintain the child by their legal father shall be preserved if the latter changes his sex"), but the general contents, legal and technical peculiarities of the document have conditioned its rejection.

### Health Legislation

A great number of bylaws distinguish homosexuals as a separate group when considering issues related to the spread of different diseases: firstly, sexually transmitted diseases and HIV.

Thus, for example, according to the Order of the Ministry of Health of RF of 30 July 2001 No. 291 "On the Measures to Prevent Spread of Sexually Transmitted Infections" <sup>1</sup>, "homosexuals" belong to the group of people with "risk behavior" together with prostitutes, homeless, alcoholics, who require education of sexual culture of contraception and free distribution of condoms.

Another document, on the one hand, stipulates that the majority of HIV-positive individuals do not belong to high-risk groups—drug addicts and homosexuals; on the other hand, it is emphasized that the educational information meant, first of all, for high-risk and stigmatized groups does not reach the addressee in the majority of cases, and homosexuals "may perceive the messages about the danger of infection as a result of homosexual contacts disseminated through mass media as a means of suppressing non-traditional minorities by the state." The means aimed at preventing dissemination of HIV among MSM (men having sex with men) include, in particular: creation of long-term stable partnerships, use of condoms, and "less dangerous sex." Finally, it is worth mentioning that the corresponding document emphasizes the need to be tolerant of MSM and free of homophobia <sup>2</sup>.

The Order of the Ministry of Health of RF of 6 August 1999 No.311 "On Approval of Clinical Guidelines "Models of Diagnosing and Treating Mental and Behavioral Disorders" <sup>3</sup> considers bisexuality and homosexuality deviations of sexual attraction. It provides for a

<sup>1</sup> See: [http://www.businesspravo.ru/Docum/DocumSHow\\_DocumID\\_23222.html](http://www.businesspravo.ru/Docum/DocumSHow_DocumID_23222.html).

<sup>2</sup> Organization of HIV Prevention among Different Groups of Population: Methodological Recommendations / Ministry of Health and Social Development of RF—2006 (See: <http://www.hivpolicy.ru/documents/index.php?id=961>).

<sup>3</sup> See: <http://www.psyinst.ru/page.php?p=70>.

special block of “Disorders of Sexual Preferences,” which presents the “sexual norm criteria”: pairing, heterosexuality, sexual maturity of the partners, free will, mutual consent, lack of physical and moral damage to health of the partners and other people. Any deviation from these criteria is considered a sexual preference disorder.

Still, there is a certain progress that proves normalization of homosexuality from the viewpoint of official authorities.

Thus, the Order of the Ministry of Health and Social Development of RF, issued in April 2008, excluded “homosexuality” from the list of absolute grounds for rejection of blood donors <sup>1</sup>.

### *Transsexuality Issues*

These issues are regulated by the above-mentioned Order of the Ministry of Health of RF of 6 August 1999 No. 311, according to which transsexualism is “a stable condition of self-identification with the opposite sex, despite the correct formation of gonads, urogenital system, secondary sexual characteristics, corresponding to the genetic gender; it is characterized by the urge towards sex transformation by hormone, surgical treatment and legalization of the desired gender role in the society.” At that, transsexualism is considered a diagnosis, i. e. a disease to be treated by psychosocial adaptation of the patient to their gender. The same order defines sex transformation as “a medical and legal act that allows the individual to play the desired gender role in the society.”

The decision on the advisability of sex transformation is made by a special medical board formed by three doctors. Based on the examination results, the board makes one of four decisions: to change the civil sex, to refuse civil sex transformation, to postpone the decision until receiving additional information about the patient; to perform sex change operation.

Indications for sex transformation include: impossibility of psychosocial adaptation of the patient with their innate sex; high level of suicides; absence of endogenous mental disease; lack of homosexuality as the leading motive for sex transformation; absence of delinquent behavior; formation of the opposite sexual identity from five-seven years old; termination of sexual development; sufficient social maturity.

As it has been already mentioned, although the Russian legislation establishes the general possibility of sex transformation and related rectification of a number of documents, there are certain gaps in the legislation related to the legal status of transsexuals. The listed medical acts cannot fill these gaps, neither do the separate provisions developed by clinics <sup>2</sup> (they ensure interests of officials instead of interests of patients; they do not establish peculiarities of legal relations after a sex change operation; they are not regulatory acts and, therefore, are not applied outside that clinic). Besides gaps in the family legislation (related to the ambiguous status of spouse and parent), there is certain uncertainty in the legislation on military service (status of the citizen in this regard depends greatly on their sex, and the grounds for the excuse from duty must be expressly stipulated by law <sup>3</sup>, and “disorders of gender identity

<sup>1</sup> The Order of the Ministry of Health and Social Development of RF of 16 April 2008 No. 175н “On Amendments to the Order of the Ministry of Health of the Russian Federation of 14 September 2001 No. 364 “On Approval of the Procedure of Medical Examination of Donors of Blood and Its Components” // Rossiiskaya Gazeta—2008—24 May—URL: <http://www.rg.ru/2008/05/24/donor-doc.html>.

<sup>2</sup> Maleina M. N. Transformation of Biological and Social Sex // Russian Law Magazine—2002—No. 9—P. 52–53.

<sup>3</sup> See: the Federal Law “On Military Duty and Service” 1998.

and sexual preference” are considered to be grounds for recognizing the citizen physically limited or ineligible for military service<sup>1</sup>).

### *Reproductive Rights*

There is still no law on reproductive rights of citizens or reproductive technologies in Russia, and the few provisions aimed at their regulation are scattered throughout various acts of different fields (chapter VII of the Fundamentals of Legislation of RF on Health Care, art. 51, 52 of FC RF, the Order of the Ministry of Health of RF No. 67 of 26 February 2003 “On Assisted Reproductive Technologies (ART) in Therapy of Female and Male Sterility”<sup>2</sup>). On the one hand, unlike a number of European countries, the Russian legislation does not deny access of same-sex couples and individuals to assisted reproduction. On the other hand, this right is ensured only to single women, and the possibility to establish parenthood with regard to a child born by a surrogate mother is provided only to married couples. In other words, a same-sex female couple can resort to donor impregnation, and only the woman who has carried and given birth to the child will be recognized his/her legal parent (mother); same-sex male couples, in their turn, face difficulties with biological parenthood. Surrogacy is accessible neither for two men, no to one of them, since FC RF does not stipulate the possibility to abolish legal maternity of the surrogate mother with the establishment of legal paternity of the biological father of the child. This provision shall be considered unreasonably discriminatory; it contradicts the standards of international law, because the principle of equality of men and women is established by the national legislation of Russia (including its enshrinement at the constitutional level), and the equality of reproductive rights of men and women are guaranteed by the Women’s Convention.

### *Burial Issues*

Burial issues are regulated by the Federal Law “On Burial and the Funeral Business” 1995. It also contains certain aspects related to the status of same-sex partners. The situation is similar to family regulation of relations between spouses, as well as to succession law. If the citizen while alive has not expressed his/her will regarding to decent treatment of his/her body after death, their spouse or relatives are vested with the right to settle issues related to burial, body prosecution, etc. And only in case the latter cannot solve these issues, they can be settled by other persons. And if the will has been expressed, this is the case of seniority of the will, implying that a homosexual can be appointed the executor of their partner’s will.

## **1.2. GENERAL CONCLUSIONS AND RECOMMENDATIONS FOR LEGISLATION IMPROVEMENT**

Thus, the study of the Russian legislation and the standards of international law on their compliance with the objectives of protecting the rights and interests of people in connection

<sup>1</sup> The Provisions on Military-Medical Expertise is approved by the Order of the Government of the Russian Federation of 25 February 2003 No. 123 (see: [http://www.rg.ru/oficial/doc/postan\\_rf/123-03.shtm](http://www.rg.ru/oficial/doc/postan_rf/123-03.shtm)).

<sup>2</sup> See: [http://www.mariamm.ru/doc\\_536.htm](http://www.mariamm.ru/doc_536.htm).

with their sexual orientation and gender identity allows distinguishing both positive and negative tendencies.

According to the analysis of the activity of the Council of Europe and the European Court of Human Rights, a number of issues have been regulated by the Russian legislation in compliance with the conclusions made at the international level (decriminalization of non-violent homosexual relations, equalization of the age of consent to homo- and heterosexual sexual relations, the possibility to rectify birth certificates and passports of transsexuals, etc.). However, the Russian legislation could be improved in other aspects considered at the international level (parental rights of homosexuals and transsexuals, the principle of non-discrimination based on sexual orientation and gender identity).

Regulation of relations in private law (civil, family), as well as a number of issues of public law (health legislation) allow individuals having homosexual relations to conclude different agreements aimed at creating a legal regime similar by its form and contents to the legal regime established by law for heterosexual couples; however, this contract regime has a number of restrictions (it does not cover non-property relations, a number of benefits and guarantees, excludes simultaneous legal recognition of two same-sex parents of the child, etc.). In this sense, one can speak about formation of legal subcultures of individuals in connection with peculiarities of their sexual orientation and gender identity: in the absence of a special regulation of their relations they use gaps in the legislation in order to achieve their own goal—adequate reflection of social, actually formed relations by law.

Nevertheless, alternative, private regulation not always adequately guarantees the rights and interests of individuals; this is why besides contractual regulation of relations there is a need for the legislation to enshrine a number of provisions. The following proposals could be made in this regard.

At the first stage, it is necessary to create a basis for equalization of the legal status of individuals regardless of their sexual orientation and gender identity. The main problem is in the social perception of differences, negative attitude towards LGBT community in general and its representatives on the part of individuals, organizations, groups and public authorities. Besides, any legal norms should correspond to the level of society development; this is why a radical reforming of all the legislation branches can lead to appearance of inoperative norms and further violation of rights and interests. Thus, the main task to be solved at this stage from the viewpoint of legislation is to ensure non-discrimination in general (enshrinement of the corresponding provisions in the Constitution of RF, doctrines, codes, etc., completion of the lists of prohibited discrimination grounds with sexual orientation and gender identity, establishment of liability for homophobic actions), to create conditions for spreading the culture of tolerance (with a special attention to it on the part of state authorities and their officials<sup>1</sup>, as well as mass media). It is also necessary to equalize the situation of men and women

---

<sup>1</sup> Thus, for example, one of the judges of CC RF proposes to pass a federal law that would “oblige our special services, by request of the community of judges, thoroughly to verify candidates to judges, of course, with their consent, and not only for presence or absence of any relations with the criminal world, but also for any possibility of blackmailing the candidate to judges (their relatives and close people), e. g. based on their excessive attachment to gambling, *non-traditional sexual orientation*, use of drugs, etc. in order for the special service to present an objective official conclusion based on the verification results, which could be one of the important grounds for making a decision on appointment or refused appointment of the verified candidate” (italics are ours—*Author*). See: Kleandrov M. I. Russian Justice Mechanism Improvement // Court Administrator—2006—No. 1. Such provisions should be totally excluded on the part of officials (courts, the more so CC RF, should protect the rights of all citizens, regardless of their sexual orientation and gender identity).

---

in the field of reproductive rights (first of all, the right to assisted reproduction regardless of marital status), as well as to solve general issues of the legal status of transsexuals, establishing legal mechanisms that would subject them to a regime corresponding to their new sex.

At the second stage, with the help of specific measures, it is necessary to provide equal opportunities for people in specific fields and branches of law regardless of their gender identity and sexual orientation (legalization of marital and quasi-marital unions, enshrinement of parental rights of homosexuals, provision of homosexual partners with the benefits and rights guaranteed to spouses).

Finally, we consider it very important thoroughly to develop legal regulation of relations in connection with gender identity and sexual orientation, which implies creation of special interdisciplinary working groups aimed at: studying social, psychological, and legal peculiarities of LGBT, developing the necessary legislation; involving stakeholders and communities in this activity; creating conditions for civilized public discussions; improving legal culture of the population in general and individuals discriminated based on their sexual orientation or gender identity in particular; using different mechanisms of protecting rights and freedoms guaranteed to everyone, including international legal instruments.

## **2. DISCRIMINATION AND VIOLATION OF THE RIGHTS OF HOMOSEXUALS AND TRANSGENDERS**

### **2.1. WIDESPREAD VIOLATIONS AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY**

The survey carried out within the monitoring (564 persons from six regions interviewed) allowed detecting interdependency between discrimination and sexual orientation/gender identity. While about the same number of respondents among the interviewed heterosexuals and LGBT representatives associate discrimination against them with nationality and religion, discrimination based on sexual orientation/gender identity is much more prominent among representatives of the LGBT community.

*Table 1. Do you associate manifestations of discrimination against you? (%)*

		<b>Heterosexuals</b>	<b>Gays, Lesbians, Bisexuals</b>
With nationality	Yes	7.30	6.90
	No	92.30	90.10
With religion	Yes	3.10	5.60
	No	96.20	94.40
With sexual orientation / gender identity	Yes	4.20	56.30
	No	95.80	43.40

Thus, for more than half of the interviewed gays, lesbians and bisexuals their sexual orientation is an acknowledgeable reason for discrimination on the part of the society and the state. At the same time, the vast majority of heterosexuals do not experience any discrimination based on their sexual orientation. *All these refutes the statements made by a series of political and public figures claiming that the problem of discrimination based on sexual and gender identity is artificial.*

Within the survey, the respondents were asked to answer four questions:

- 1) Have you been subject to physical violence after the age of 16?
- 2) Have you ever been subject to threats, blackmails and psychological pressure on the part of surrounding people after the age of 16 (relatives, colleagues, etc.)?
- 3) Have you personally had difficulties (barriers) in your relations with employers, which would not be related to your business (professional) skills?



Homosexuals manage to avoid problems in relations with their employers by carefully hiding their sexual orientation. Gays and lesbians more often have to give incomplete information about them in order to receive a job.

Have you personally had difficulties (barriers) in your relations with employers, which would not be related to your business (professional) skills? (%)

Table 6. Voronezh

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
I was fired or had to leave the job	0.00	9.43	0.00	4.39
I was refused employment	8.70	13.21	10.53	11.40
There were difficulties with promotion	8.70	5.66	15.79	9.65
I had to provide incomplete information to receive the job	17.39	7.55	13.16	11.40
Nothing of this kind	65.22	64.15	60.53	63.16
	100.00	100.00	100.00	100.00

Table 7. Omsk

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
I was fired or had to leave the job	2.63	12.00	0.00	6.25
I was refused employment	7.89	3.03	0.00	5.00
There were difficulties with promotion	10.52	9.09	0.00	8.75
I had to provide incomplete information to receive the job	26.31	3.03	33.33	17.5
Nothing of this kind	57.89	72.73	66.67	65.00
	100.00	100.00	100.00	100.00

Table 8. Rostov-on-Don

	Sexual Orientation			All Respondents
	Gays	Hetero	Lesbians	
I was fired or had to leave the job	4.00	14.82	0.00	10.47
I was refused employment	8.00	7.41	0.00	6.98
There were difficulties with promotion	16.00	25.93	0.00	20.93
I had to provide incomplete information to receive the job	12.00	11.11	28.57	12.79
Nothing of this kind	72.10	59.26	71.43	63.95
	100.00	100.00	100.00	100.00

The need to hide one's sexual orientation is a serious stress factor, which reduces the quality of life of gays and lesbians. Among the interviewed users of the QGuys.RU portal (more than 3,000 people), 54% declared that that depressed them.

According to the survey results, gays and lesbians encounter violence and abuse on the part of law enforcement bodies and other authorities more frequently than heterosexuals.

Have you ever encountered violence and abuse of power on behalf of authorities? (%)

Table 9. Voronezh

	Sexual Orientation			All Respon- dents
	Gays	Hetero	Lesbians	
Yes, many times	4.35	3.77	2.63	3.51
Yes, one or two times	34.78	11.32	13.16	16.67
Never	60.87	84.91	84.21	79.82
	100.00	100.00	100.00	100.00

Table 10. Krasnodar

	Sexual Orientation			All Respon- dents
	Gays	Hetero	Lesbians	
Yes, many times	21.43	12.12	0.00	12.96
Yes, one or two times	50.00	63.64	28.57	55.56
Never	28.57	24.24	71.43	31.48
	100.00	100.00	100.00	100.00

## 2.2. OFFENCES AGAINST LIFE, VIOLENCE AND OTHER TREATMENT THAT ABASES HUMAN DIGNITY

According to a survey carried out in December 2007 among the users of one of the biggest Russian portals for gays and male bisexuals Qguys.Ru (3,800 people), 27.17% of the respondents had suffered from physical violence because of their sexual orientation. Physical violence was equally typical for all types of localities (capital cities, oblast centers, district centers, rural area). 37.12% of the respondents had been subject to threats, blackmailing or other types of psychological pressure.

Only in rare cases hate crimes against homosexuals become known to the law enforcement bodies and the public. Usually, victims do not address to the police, prosecutor's office or court and avoid disclosing the problem fearing homophobia on the part of authorities.

At the beginning of October 2007, a young man called Denis was killed in Yekaterinburg near the night club "Moloko," where parties for gays and lesbians are organized. Several attackers inflicted him numerous injuries and an open skull fracture. They wrote the word "queer" on the chest of their victim with his own blood. The information on this case was immediately closed to the public. When the friends of the killed man came to the police department to find out about the progress of the investigation, they were told that nothing of

what they were saying had happened. The relatives refuse to provide any information either. According to unconfirmed information, the guilty persons have appeared before the court and have been sentenced with probation.

In Shabrovsk village, Sverdlovsk oblast, two local inhabitants were arrested on suspicion of brutal murder of another villager. The prosecutor's office of Sverdlovsk oblast declared that the body of the killed person with cut wounds on the neck, head and with a brain injury was found on the snow near his house on 28 February 2008. On 5 March, two villagers aged 17 and 19 were arrested. They owned the murder. One of them was accused of "murder" and the other of "premeditated infliction of average bodily damage." People from the prosecutor's office said that the murder had been based on personal hostility as the accused considered the victim to be of a non-traditional sexual orientation.

On 11 October 2006, two servicemen bashed up to death a 28-year-old local inhabitant under the bridge over the Om River in Omsk City. The investigation established that the 20-year-old private Pavel Mertz and the 22-year-old corporal Victor Shevchuk had met in an Omsk hospital. To get rid of hospital boredom and to earn some money, Mertz offered his sexual "services" to the 28-year-old man, who was also called Victor. The curious Shevchuk decided to be present at that meeting. Having received what he was promised from the soldier and having paid him 200 rubles, Victor made a similar offer to Shevchuk. The corporal took it as an offense and started beating Victor. Soon, Mertz joined him. They were beating the young man for a long time with cruelty, strangling him with a scarf. Then, they took his money, cell phone and shoes and left sure that Victor was already dead. However, experts established that he had been alive for another 24 hours lying dying in the frost.

The servicemen called it an accident in a closed trial.

On the night of 20 January 2007, two young men assaulted on the well-known journalist from Khabarovsk Konstantin Borovko and his friend Dmitry Cherevko who had left the gay-club "Taboo" near the block No. 51 on Krassnogo Znameni Avenue in Vladivostok. They stroke numerous blows with their heads and legs at their victims' heads and body. In addition, they stole cell phones and money from the victims. The passers-by who found unconscious people called the ambulance. The doctors certified the death of Konstantin Borovko as a result of heavy brain injuries. Dmitry Cherevko was hospitalized and spent several days at the resuscitation unit. The Pervorechensk district court of Vladivostok City found Alexander Poludeny and Alexander Y. who was not 18 at the moment of crime guilty of the assault on 27 February 2008.

On 3 March 2007, several persons were beaten up with brutality at the night club "Zhara" in Kaliningrad. According to a victim's testimony, the actions were accompanied by obscene words indicating that the reason was the non-traditional sexual orientation of the club visitors. As a result of beating, several ribs and the nasal arch of this person were broken. Other people received less serious injuries. Nobody filed a complaint with the police department.

Purposeful "gay hunting" cases become more and more frequent. Criminals meet their victims in gay-clubs or other meeting places of homosexuals, worm themselves into their confidence, then beat them up or kill them.

"An acquaintance of mine set a meeting with a new pen pal in the summer of 2007. Nobody came to the meeting, but when he wanted to leave the place, he was overtaken by a group of men and somebody punched him on the head from the rear. As a result, he fainted and woke up in the hospital with head injuries" (Sasha, 28, Omsk City).

"Many heterosexuals meet gays on the Internet already full of hatred for this group of people, and if they do not manage to wreak their anger at the "first date," they threaten on the Internet with beating up, rape or death" (Evgenii, 20, Omsk City).

An open gay was killed on 25 January 2006 in Tyumen City. He did not have other relatives apart from his mother and they lived in a 2-room apartment in the center of the city, near the traditional meeting place (“pleshka”). He was killed after his birthday. The attackers broke into the apartment and beat his mother and him for a long time. Then they strangled both of them with a guitar string. This crime has not been solved yet.

Tyumen gays report a great number of unsolved murders of homosexuals within the last six years. Beating and assaults take place as regularly at the “pleshka.” Criminals trace the men who go there then attack them certain that the victim will be afraid to go to the police.

On the night of 30 April 2007, a second-year student of the Ecclesiastical Academy, psalm-reader at the Kazan Cathedral, Dmitry Zvyagintsev, was assaulted in Saint Petersburg. According to the police, he had spent the night at the “Central Station”—one of the most famous gay-clubs. There he met a young man that he invited to his place. At 5 o'clock in the morning, Dmitry was found at the entrance to his block unconscious with multiple knife wounds. The victim was transported to the resuscitation unit of Mariinskaya Hospital. The doctors had to remove an eye and a lung. They also found serious liver injuries.

According to the Saint Petersburg gay activist, manager of the “Central Station” club Ignat Fialkovsky, a favorite amusement for students is to meet a gay on the Internet and then to bash him up with the entire group.

On 12 January 2008, an anonymous young man contacted volunteers who were conducting a monitoring in Voronezh. He told the following on the phone: “On my way back from my boyfriend, at about 22:30, I was walking through the yards to cut the way and saw several young men at one of the entrances to the block. There were three of them. Then, one of them entered the block. They were smoking. I was passing by and the distance between us was quite big. Of course, I did not look at them and did not try to speak to them, because I was afraid to draw their attention. But, what I feared happened. One of them shouted something obscene and the message was for me to provide sexual services to them. I did not make it out what they said at once, so I stopped and asked them: “Sorry?” They started laughing and I understood that it was better for me to go. But they were shouting at me and continued offering various obscenities. The distance to my block was small, but they were following me rapidly. I could not bear it and started running. They also started running and shouting. Very scared, I entered the first entrance and knocked on a friend’s door. He let me in. Then, he accompanied me to my block, when the cries outside stopped. I did not call the police. They did not do anything to me and I had no reason to complain. I do not walk though the yards since then. The worst thing is that I have got the habit of looking back after that event. Tell me, how long do I have to feel like a tracked down hare trembling from every cry in the hunting season?!”

There are many cases of bullying when victims are considered to be gays or lesbians by the attackers.

In May 2007, a whole series of assaults based on homophobia took place at an attempt to have a gay pride in Moscow and after it.

Two friends aged 31 and 28 were coming back from a visit to somebody’s place. At 14:00, a group of aggressive young men blocked their way in the Teatralnaya Underground Station. They asked: “Are you queers?” And, without waiting for an answer, stroke two blows and ran away. One of the victims had concussion of the brain, the other hematomas.

At the Belorusskaya Underground Station, a 25-year-old barman and a 22-year-old waiter of one of Moscow cafes were beaten up at about the same time on their way to work. They were not allowed to work with bruises.

Another victim who addressed to the Russian network of LGBT organizations says:

"I was beaten by three unknown persons on Tverskaya Street. When I was walking in the direction of Okhotny Ryad, I heard the question: "Are you a gay, mister?" I answered: "What difference does it make?" Having walked another few meters, I felt a strong blow on my back, then multiple blows with hands and legs on my body..."

He went to the Chertanovo-Severnoye IAD (Internal Affairs Department) and to the traumatologic center on the same day (27 May). No investigations were carried out on the basis of his request. The police did not even interrogate him.

Assaults on homosexuals are often committed for "ideological" reasons. According to the Lgbtrights.Ru website, a group of skinheads attacked a couple of gays threatening them verbally with murder on 14 December 2008 in Novosibirsk city. "It all started as usually, they asked for cigarettes. Then they started molesting Denis saying that they did not like the way he was dressed and particularly his hanging suspenders. I tried to stop them explaining that he was a designer and a visitor to the city. Of course, his dressing style differed from the one of other people. They said they were skinheads and they were killing gays. Then they showed me a big chain they used to bash gays and non-Russians" tells one of the victims. They managed to convince the skinheads that they were not gays, "to avoid being killed on the spot."

"They overtook us and tried to attack Denis. I tried to help him and shot from my tear gas spray twice but missed. Then, a guy who was taller than me took the chain and started hitting me with it on my head and face. I fell on my stomach and turned over and the guy with the chain jumped on my chest and started beating me mercilessly on my face with his fists. I tried to protect myself, but it was useless. I was crying and calling for help, while Denis was fighting with the other guy (he had done martial arts a little). I thought that guy would kill me" tells the victim. Only appearance of a passerby with a dog scared the attackers away <sup>1</sup>.

The victims of attacks are usually those who have tried to defend their dignity and rights in courts, as well as activists of LGBT community-based organizations.

Andrei K. (Moscow city, 28 years old) was assaulted after he had gone to the court in relation to his illegal dismissal on the ground of sexual orientation.

"On 13 November 2007, at about 23:30, near the Sevastopolskaya Underground Station and block No. 36 on Azovskaya Street, David (Andrei K.'s friend) and I were attacked by two unknown persons. The attackers looked like skinheads: shaved heads, black leather jackets and boots with many metal staff, rings on their fingers looking like brass knuckles. The reason for the act of violence was seeing us kissing when they were passing by. They shouted: "Beat the bloody queers!" and attacked us, striking with their hands and legs on our face, head and inguinal region. We could not show active resistance to them, because the first blows were so strong that we fell on the ground almost simultaneously and tried to protect our faces with our hands. The beating lasted for about twenty minutes and ended only when a woman cried in a window: "I am calling the police!" Then, the attackers took our cell phones and ran away."

The next attack on Andrei K. took place three days after the Khoroshev district court dismissed the claim. The victim describes what happened in the following way: "On 16 March 2008, at about 22:00, I was beaten with brutality by unknown persons. Although I decided not to live in my apartment and came there very rarely to check the post box, a group of four young men waited for me near my block on Trekhprudny Street and pushed me in a white "Gazel" windowless minibus with blue police number plate. There, they started beating me

<sup>1</sup> [http://lgbtrights.ru/index.php?option=com\\_content&task=view&id=401&Itemid=90](http://lgbtrights.ru/index.php?option=com_content&task=view&id=401&Itemid=90).

and applying special tools—electric shock and tear gas sprays. The young men were wearing black-and-white and white jackets with the “Nashi” (*Ours*) inscriptions, and there were bandages with the “druzhdina” (*squad*) inscriptions in the car.” “You, queer, want to defend your rights? You will not live... we will burry you alive!” I do not remember how long it all lasted for, but when I woke up, I saw that they had thrown me out of the car in the street in the area of the Third Traffic Ring (in that part of it, which is close to my district), the passers-by asked a passing ambulance to provide medical assistance to me. The ambulance brought me to the S. P. Botkin Hospital. After medical examination and medical assistance provided to me I was sent to the neurosurgery department, but because of unbearable living conditions I refused hospitalization, called a taxi and went to David’s place, which was located in Pushkino town, Moscow oblast.”

The members of the Russian LGBT Network and “Vykhod” (*Exit*) organization from Saint Petersburg also faced direct violence. On 3 May 2008, after the “Silence Day” action aimed at drawing the attention of the public to the issue of hate-based violence, three unknown persons assaulted the president of the Russian LGBT Network I.Petrov, the executive director of “Vykhod” organization V.Sozhaev and I. Fialkovsky who was the press-secretary of the LGBT film festival “Side by Side.” As a result of this assault, Petrov and Fialkovsky received multiple injuries and bruises.

Cases of sexual violence or threats of sexual violence related to victims’ sexual orientation are quite frequent. On 22 March 2008, the following happened in the center of Voronezh city. According to the 19-year-old victim Elena, her brother and five of his friends were drinking, watching movies, laughing and talking loudly. Elena’s relations with her brother were tense because of his intolerance to her sexual orientation, so she was sitting silently in her room. Then, the noise stopped. She heard the door slamming. Elena decided that the guests left. She did not see anybody and went to the kitchen. There she heard rustle and chuckles. She ran back to her room, but two or three young men stopped her; she ran to the door, opened it, but her brother and another person were standing there. They were all drunk and embittered. Her brother told her in a brutal way that he could finally teach his stupid sister a lesson on whom she should love. He was crying, grabbing her by her shoulders, smacked her on the face and head. Elena was afraid that they would rape her, but it did not happen. However, she received a serious psychological trauma. She did not inform her parents about that, because they did not know about her sexual orientation (her brother saw her kissing a girl). She did not report it to the police either.

Young men and women of school age who realize their homosexuality are in an extremely vulnerable position. They often face a double pressure—on the part of their classmates and on the part of their parents.

“In 2004 I was a student at a boarding-school. My friends and classmates started calling me names, blackmailing me, laughing at me when they found out about my homosexuality. I was in the eighth grade and had one more year to study. So, I was abused physically, spiritually and mentally during that year” (Alexander, 21).

Students with non-traditional sexual orientation often become the object of harassment on the part of administration and staff of education institutions. An anonymous 20-year-old woman from Saint Petersburg told us a typical story.

“I was a student at the teaching college and my girlfriend was studying at the same college, but in a lower year. Her mother knew everything about her and when I made my forced coming-out, she came to the director with three complaints: that I have seduced and accustomed her daughter to hard drinking and drugs (which was not true, of course). Alex and I started being called to the dean’s office for long “explanatory discussions” every

day: we were told that we required a treatment, had to work on ourselves or, in the worst case, bury our attractions deep in our soul. Then, we started attending compulsory discussions with the psychologist who was trying to “correct” us three times a week; he was assuring me that I was not a true lesbian, because he had seen “true” lesbians; that I was just paying a tribute to fashion, listening to the “Tattoo” band (by the way, I have never listened to them), the front-girls of which are, in fact, naturals. Most of the students in our groups stopped talking to us; they started pointing fingers at us, laughing at us. Teachers (except for two of them) started picking on us and told us directly that we would not pass the examinations until we did not “correct” ourselves. This was exhausting us, the psychological pressure was enormous; we could not keep up with the syllabus; we were permanently on the expulsion list. Finally, they offered me a choice: either they would expel me (although I had passed almost all of the failed tests) or I would go to the district psychiatric hospital for children (I was 17 then). I chose the second. The indifferent psychiatrist did not give me anything; he just prescribed Phenazepam and some other crap (I did not remember, because I did not even buy it). They opened a file on me with the “suicidal syndrome” diagnose (I was not thinking of suicide, but Alex and I tortured ourselves because of stress—we cut our hands). They would give me certificates in the hospital that I would bring to the dean’s office. They stopped paying attention to me there, but I had to take a sabbatical leave because of the accumulated failed tests, although I continued visiting Alex at the college. Next year I was restored in her group, but it was impossible to study and they introduced distant learning for us, which was a miracle, as it did not exist officially (thanks to my mother’s contacts). Then, I turned 18 and was transferred to a psychiatric clinic for adults, where doctors had a good attitude, took me off the record and I stopped going there. This is how we studied for one year until internship at a school began (teaching Russian language and literature). After my “treatment,” I did not change my preferences and they offered me to choose between: loving men, leaving the college on my own free will, or being expelled. I am not a person who gives up immediately and tried to stay there in spite of everything. It was a pity to lose three years of study: I was in my third year already. However, permanent faultfinding on the part of teachers started: they said I did not correspond to the “Russian teacher image,” that I should wear skirts (although this did not apply to my other colleagues), make-up and have long hair, I have to quit smoking and a lot of other trifles. The teaching methodology specialist would not let us do the internship and then she would not give us a pass. My mother who saw the problems we were struggling with used her contacts to arrange for our transfer to a night school for working young people, but we did not attend that school. They gave us passes in the end and we received the certificates of secondary specialized education.”

### **2.3. INACTION AND ABUSE OF POWER BY LAW ENFORCEMENT BODIES, VIOLATION OF THE RIGHT TO FAIR TRIAL**

As mentioned above, people who suffer from physical violence or abasement of human dignity because of their sexual orientation or gender identity, usually do not file complaints with the law enforcement bodies, because not only do they not expect to find protection there, but also fear the consequences of such complaints.

After the assault against Andrei K. (see above), he went to the police station.

“On the following day, on 14 November 2007, at 12:00, we went to Zyuzino IAD, Moscow City, to file a complaint about what had happened. However, the duty officer, major Tyukaev, read the text of the complaint and refused to accept it saying: “Bigger off, queer sons of a bitch!” And added that if we would ever try to file complaints on harassment based on sexual orientation again, his colleagues and he would mutilate us so that we would not be able to walk away on our feet. “You got off cheap, people like you should be eliminated” added the captain on duty T. N. Bozhko.”

Usually, police officers refuse to record homophobic reasons of attackers in the reports. This happened in the case of skinheads' attack on a couple of gays in Novosibirsk: "We were held there till six in the morning, the police officers were brutal to us; they did not want skinheads and the fact that the reason for their attack was hate to be mentioned in the report. They issued the resolution for the forensic medical expertise only two days later" says one of the victims. Cases of police inaction were also recorded during the assaults of nationalist and fundamentalist organization representatives on the participants in public events organized by the LGBT community in Moscow within 2006–2007.

At the end of April 2006, the organizers of the LGBT-culture festival "Rainbow without Frontiers," which was planned for early May, filed a complaint with Moscow MIAD (Main Internal Affairs Directorate) on the threats of physical extermination that they had received. However, the MIAD officers refused to accept it initially. They managed to file the documents only at the second attempt with the help of the courier service, but there was no reaction to that whatsoever<sup>1</sup>.

On the night of 1 May 2006, a big group of skinheads and persons calling themselves orthodox believers assaulted on the "Renaissance Event Club" night club, where the opening of the "Open Party" gay dance project was supposed to take place.

On the evening of 30 April, a column of about 200 young men chanting homophobic slogans started their movement from Shabolovskaya Underground Station. There was no way the police could not notice the movement, but they did not take any measures.

At 22:00, the extremists blocked the club not allowing visitors to come in. Some guests of the party who tried to get in and several club staff were beaten up. The administration of the club called the police.

Two police officers turned up at 23:00 and told the staff to take their things and leave the place in a brutal way. For an unknown reason, the "police officers" made the organizers of the party responsible for what had happened: "You organized this, you face the consequences! We are closing your club!" Then, the storm on the metal doors to the club started. Bottles, ground from the flowerbed and stones were thrown under the accompaniment of psalms.

The police bus arrived at 00:45. A "safety corridor" was created by seven or eight police officers. The first people started leaving the club and bottles, eggs, stones, ground were thrown at them. The police did not take any measures again.

Having caught up one of the young women coming out of the club, several persons started beating her with sticks, crosses, icons and other objects on her head. They also beat her with their legs in the stomach. The police officers did not take any measures again. The victim was taken to the traumatologic center.

At two o'clock in the morning, the tired drunk and brutal crowd tried to assault the building. The police was watching. The people inside held an urgent meeting. They decided to cut off power in the entire building and to switch off all the lights. The club's security staff announced that they refused to be responsible for the security of those who were inside.

A new evacuation attempt was made. The police brought the bus close to the exit. But the insane crowd did not let anybody leave the building.

Comfortable buses showed up at 02:10 and took part of the "protestors" away. Only crazy aged religious fanatics with icons and crosses chanting: "Queer buggers, die you all! God will punish you!" were still there.

---

<sup>1</sup> <http://gaynews.ru/news/article.php?ID=2245>.

A representative of the prosecutor's office arrived and even recorded the testimony of people who were in the club. But we still do not know anything on the results of investigation<sup>1</sup>.

The police took measures to prevent an attack and arrested the ruffians only on the second day when a crowd of ruffians under the command of the Russian National Union leader Igor Artemiev made an attempt to attack the "Three Monkeys" club.

The participants in the attempt to carry out a peaceful demonstration for the protection of sexual minorities' rights in front of the Moscow City Hall on 27 May 2007, as well as the observers from human rights organizations who were there saw that the police not only failed prevent beating and insulting of the demonstrators by skinheads, nationalists and orthodox activists, but also supported the pogrom-makers. "Instead of protecting the victims, the police was obviously playing the same game as the pogromists," says Maxim Anmeghichean, program director for the European region of the International Gay and Lesbian Association (ILGA). "It was not splitting the two sides, but pushing them one towards another stronger and stronger to aggravate the assaults and then watching how demonstrators were beaten."

According to the witnesses, "people in civilian clothes" were approaching the groups of opponents to the manifestation pointing at gay-activists and representatives of sexual minorities, who were then assaulted. Later on, those "people in civilian clothes" were seen at the police station among MIA staff.

Several dozens of people, both gay-activists and attackers were arrested in relation to the events that took place at the City Hall. However, the latter were rapidly released even without drafting any reports, while many gay-activists spent six to eight hours at the police station and then appeared before court.

On 12–21 June 2007, young orthodox organization "Georgievtsy" carried out daily picketing with homophobic slogans in the Ilyin square of Moscow. The deputy prefect of the Central Administrative District of Moscow City, G.S.Boryatinskaya, declared: "No requests to coordinate an action "in order to obstruct the gathering of persons with non-traditional orientation at the statue" were submitted to the prefecture of the Central Administrative District" in a reply to the request of the Legal Information Agency LINA. In other words, the several-day picketing was not coordinated with the authorities. The organizers of a Moscow "gay-pride" were arrested by the police and appeared before court for the attempt to have an uncoordinated picketing a week before those events. However, no sanctions were applied against "Georgievtsy."

The participants in the picketing were regularly provoking confrontations with the visitors of the square and assaulting those whom they considered to be "gays." The police was taking them apart, but would not take any measures to stop the picketing, which became an obvious threat to the public safety.

The repressive attitude towards homosexuals leads to permanent reproduction and abuse against gays and lesbians on the part of law enforcement bodies. Unlawful arrests (both individual and group) of people, as well as interference in their private life, collection of personal data take place under the pretext of operative investigation activities for the sole reason of their real or imaginary homosexuality.

On the night of 31 August 2008, the SRRD (Special Rapid Response Detachment) broke in the "Hunter" club in Krasnoyarsk City, where a traditional Saturday party for gays and

<sup>1</sup> [http://gaynews.ru/society/article.php?ID=2266&phrase\\_id=159450](http://gaynews.ru/society/article.php?ID=2266&phrase_id=159450).

lesbians was taking place. According to the witness Igor N., the SRRD broke in the club at midnight. The SRRD announced its presence with filthy language, dish breaking, furniture rolling-over and firing in the air. They ordered everybody to lie on the floor face down and put their arms behind the heads. Some of the visitors were kicked on different parts of their body; others were cut by the broken glass. Then the male visitors were accompanied to the bus with kicks of the SRRD officers who created a corridor. "People were sitting on each other's legs, in some cases even two on one person. The order was to turn off the cell phones and keep silent" Igor told.

The apprehended persons were brought to the Department for Combating Organized Crime and Racketeering. Accompanied again with kicks they entered a room and were told to stand facing the wall holding their arms behind the head. The police officers continued humiliating the "Hunter" visitors: they were calling them "fu..ing queers," "fags." "Then, they were told to do press-ups, squat and stand in a dog-fashion position. All this was filmed on personal cell phones of the "police officers" and was, of course, accompanied by obscene words, wild laughter and offences of a common and personal nature" Igor adds. The creation of a database, which was the purpose for bringing the club visitors there, started after the "exercises." People were photographed in two projections; their address was recorded with the purpose of their visit to Krasnoyarsk if their place of residence was not in the city; their wallets were checked as well as the business cards that were there; their SMS were read and the video-files watched in their cell phones. According to Igor, this is how the owners of cell phones were ascertained as gays.

At about two o'clock in the morning, all the apprehended persons were taken on the same bus and in the same conditions to the Zheleznodorozhny BIAD (Borough Internal Affairs Department) where they were photographed again and their fingerprints were taken until the device broke down. Meanwhile, the SRRD officers were standing near the detainees arranged against the wall and were kicking those who, in their opinion, were not standing correctly. People were not allowed to use the bathroom for almost three hours.

They were released only at five in the morning. In addition, they all received summons to the prosecutor's office for a genomic investigation. "The officer, who gave us the papers, forced us to sign for receiving them, without letting us read the contents of the document. If somebody tried to express their indignation, they were receiving the explanation in a brutal form" Igor says.

When the events in "Hunter" club went public, Main Internal Affairs Directorate in Krasnoyarsk region disseminated the official statement, declaring, in particular, the following: "On 30 August, the criminal office of the regional Main Internal Affairs Directorate received the operational information, according to which there could be a person involved in such crime in one of Krasnoyarsk clubs. Criminal investigation officers together with the special purpose police squad of the regional Main Internal Affairs Directorate carried out a crime-prevention operation at that establishment. The special operation aimed at apprehending and verifying people with non-traditional sexual orientation, who regularly meet at this club. As a result of the raid, 31 persons were brought to internal affairs bodies. All the apprehended persons were subject to investigations aimed at establishing their implication in the crimes stipulated by Art. 132 of the Criminal Code of the Russian Federation (violent sexual actions). All actions of the police officers were within the limits of the law; no physical force was used when apprehending and bringing the club visitors to the competent bodies. No apprehended person has addressed to healthcare institutions complaining about any infliction of

bodily injury. There have been no complaints on the part of the apprehended persons or their relatives with regard to the actions of the police officers yet”<sup>1</sup>.

Regardless of how the Main Internal Affairs Directorate has evaluated the actions of their subordinates, it is obvious that “non-traditional sexual orientation” is considered by them as the only and sufficient ground for “verification”—temporary limitation of freedom and application of coercive measures. In other words, homosexual orientation is considered a sign of social danger. The Head of the Krasnoyarsk Main Internal Affairs Directorate, Alexandr Gorovoy, has declared it expressly in the interview to “Komsomolskaya Pravda v Krasnoyarske” of 26 March 2008: “906 potentially dangerous individuals have been checked for the implication in the crime. 737 individuals with past convictions for sex crimes have been verified. 135 former teachers and other staff dismissed from schools within the last four years have been also verified. One of the operations was carried out in the cruising area for people with non-traditional sexual orientation; and 90% of such people in the region have been verified at the moment.”

On 9 September, the investigation directorate transmitted complaints on the part of two persons apprehended during the “Hunter” raid—O. Iu. Ganichev and O. V. Suschinski—to the investigation office for particularly important cases of the Investigation Directorate of the Investigation Committee under the Prosecutor’s Office of the Russian Federation for Krasnoyarsk region. On 12 September, the head of the office extended the application examination term by ten days.

As a result of the verification, the Investigation Committee interrogated the police officers who had taken part in the special operation, as well as a number of individuals who had been apprehended in “Hunter” club. All of them claimed that there were no acts of force and abasement of human dignity of those apprehended. However, the verification confirmed the fact that the alleged sexual orientation had been the only ground for suspecting the apprehended persons of committing the crime.

According to the investigator for particularly important cases of the Investigation Directorate of Krasnoyarsk Investigation Committee, D. Ia. Bekin, “regular actions aimed at identifying persons of the specified category,” i. e. homosexuals, are permanently carried out under the investigative action plan. One of the objectives of such “actions” is “to obtain samples of their blood and spittle for further comparative examination.”

The head of the combat element of the special purpose police squad under the Krasnoyarsk Main Internal Affairs Directorate, V. G. Levitski, also confirmed that the special operation carried out in “Hunter” club aimed namely at “apprehending persons with non-traditional sexual orientation.”

On 19 September, based on the results of the verification, the investigation office for particularly important cases made the decision to reject the initiation of a criminal case, which was abrogated by the deputy head of the investigation directorate on 29 September, and the materials were transmitted for additional examination. Later on, the Investigation Directorate under the Prosecutor’s Office of the Russian Federation for Krasnoyarsk region has repeatedly rejected the initiation of the criminal case.

In September 2008, there were incidents in Saint Petersburg similar to those happened in Krasnoyarsk.

On 8 September, around 8:30 PM, officers of the Moscow District Directorate for Combating Organized Crimes burst into “Bunker” gay club. During the “operational-investi-

<sup>1</sup> <http://www.krasguvd.ru/news/2008/09/08/5679>.

gative activity” they groundlessly broke the door and bars of the club, using metal fittings and other tools, seriously damaging the property, insulting the staff and visitors of the club; they presented neither themselves nor their service certificates, establishing the identity of the club visitors in a rude and abusive form, demanding the documents. After that they brought the staff and the visitors of the club to Moscow District Internal Affairs Directorate without giving any reasons, where in the night the apprehended persons were subject to “operational-investigative actions.”

The complaints of the club staff addressed to the director mention moral coercion, humiliation, threats, and other facts implying an express abuse of power by the staff of the Moscow District Directorate for Combating Organized Crimes. The club bar and storage inventory performed on the next day showed the shortage of alcoholic beverages; four computer system units and a video recording system were seized as well.

According to the club owner, the visit of the officers of the Directorate for Combating Organized Crimes was connected with the murder that took place on 19 August. The murdered person was a quite regular visitor of “Bunker.”

On 17 September in the night, the police burst into “Tsentralnaya Stantsia” (Central Station) gay club, apprehended all the visitors and brought them to the Moscow District Internal Affairs Directorate. According to the witness, around 60 apprehended persons were taken away in a small bus. One of the police officers recorded everything by a video camera. All the apprehended persons were asked about their sexual orientation at the police station. Two of them were released when they claim being heterosexuals. Two couples able to prove that they were married were allowed to leave as well. The police officers were generous with homophobic insults and threats against those who remained, in particular against those with piercing and colored hair. “There was no violence, but they treated us like cattle, like slaves. Police officers would enter the room every five minutes and ask questions. They were interested to know who of us were homosexual and who were straight. According to the witness, they even took the liberty of asking the apprehended persons who of them were “tops” or “bottoms.” Police officers attempted to blackmail the apprehended persons by threatening to tell their families, superiors at work or educational institution about the club they used to visit. At around 6:00 AM, after having been photographed and signed the documents obliging them to “help in further investigations” all the apprehended persons were released. Although the reasons for apprehension were not given to the club visitors, the director and the co-owner of “Tsentralnaya Stantsia” Ilya Abaturov explained that the raid was connected to the investigation of the murder of a Ukrainian citizen <sup>1</sup>. According to the available information, the body of the murdered person shown in a photo to the apprehended people was so mutilated that even with the best will in the world it was difficult to understand whether it belonged to a human being.

One of the apprehended persons, who signed the message on xs.gay.ru website as Domingos, told the following:

“I was among the apprehended people and think that the reason for detaining us was not the identification of the murdered person and the solution of a murder case in Saint Petersburg... It was a provocation aimed at intimidating people, because not more than 10–15 seconds were dedicated to the murder case within the interrogation: a picture was shown to me and I was asked whether I knew that person. After that there were a lot of questions not related to the case: who are you living with, who you have sex with, how often do you have sexual relations with

---

<sup>1</sup> [http://www.sptimes.ru/index.php?action\\_id=2&story\\_id=27163](http://www.sptimes.ru/index.php?action_id=2&story_id=27163).

men, etc. They took my phone by force and started examining my pictures and messages: they asked why I corresponded mainly with guys and had many pictures of them in my phone. I told them not to meddle with my private life. After that I was let free, but the others, as I know, remained there until 9:00 AM”

An Omsk resident (Denis, 34 years old) told in the interview to the regional monitor:

“On 18 April 2008, my partner and I were subject to investigative actions by police officers (bringing us to the police station, taking testimony, photographing) in relation to the case of a missing minor girl. At that, the investigative actions undertaken by the investigation group were directly related only to our non-traditional orientation. We were interrogated separately. My partner was given to understand that he got there only because of me—to all appearances, I am on the lists of the Internal Affairs Directorate as homosexual. I was also offended by the fact that my orientation was directly connected with the search for the missing girl; I was asked many questions not at all related to the case, such as: “are you active or passive?” The investigators were also speaking among themselves about other gays they had already had discussions with. However, I do not know them.”

This example clearly shows the absurdity of the police actions and a biased attitude towards gay people as a social group. Homosexuality was the only reason for the “operational-investigative actions” against Denis and his partner, like in the other cases. At that, they investigated the case of a missing *girl*.

Activists of the Russian LGBT movement mention many cases of a biased attitude of judges and prosecutors upon examination of complaints and suits related to violation of constitutional rights and offences against gays and lesbians.

In April 2007, Tverskaya inter-district prosecutor’s office of Moscow city refuses to start a criminal case against Talgat Tadjuddin, the Chairman of the Central Muslim Spiritual Board of Russia, according to Art. 282 of the Criminal Code of the Russian Federation (incitement of hatred or enmity towards a social group), as requested by gay activists N. Alexeiev and N. Baiev. The prosecutor’s office refers in its order to the expert opinion of the head of the Family Sociology and Demography Department of Moscow State University M. V. Lomonosov, PhD, professor A. I. Antonova, according to which “sexual minorities are not a social group, much less a gender-defined social group, they are part of the deviant social group together with criminals, drug addicts, and other individuals with deviant behavior.” Based on this opinion the prosecutor’s office concludes that Art. 282 of the Criminal Code of the Russian Federation does not protect homosexuals, which means, probably, that anyone inciting hatred and enmity towards them can escape unpunished.

The justification for Tadjuddin’s words that “they must be just beaten” was found not in the Russian legislation, but in “the legislative schools of Islam, in particular in the Mazhab of Imam Shafii. And due to the fact that shariah has no statutory basis in Russia, this opinion, obviously, was of hyperbolic nature and implied suppression of criminal violent actions, including public propagation of the homosexual ideology and way of life among the under-aged.”

Thus, Tverskaya inter-district prosecutor’s office not only bracketed gays and lesbians with criminals and drug addicts, but also accepted the responsibility of a legislator. There is no Russian legal act that would qualify dissemination of the information on homosexuality and the way of life of gays and lesbians (including among the under-aged) as “criminal hooliganism.”

In March 2007, a group of human rights defenders made a public statement declaring that the insistent attempts to introduce the so-called homosexuality propagation into the legislation and law-enforcement practice is a direct violation of human rights and freedoms. They mentioned in their statement the warning given by the prosecutor’s office of Rostov oblast to two local TV channels in March 2006 for broadcasting SMS messages of men interested in

relationship with other men, which was classified as “propagation of non-traditional sexual orientation” “forbidden in Russia,” which is clearly untrue.

The General Prosecutor’s Office of the Russian Federation explains the ban on the broadcasting of men-to-men announcements by the fact that they can have “a potentially negative information influence” on the under-aged and “ingrain in their consciousness the cult of promiscuity and antisocial behavior.”

On 19 May 2008, the activists of GayRussia.Ru project, Nikolai Alexeiev and Nikolai Baiev, submitted a petition to the General prosecutor’s Office of the Russian Federation requesting to verify hostile statements of the governor of Tambov oblast Oleg Betin addressed to gays and lesbians, and to initiate criminal proceedings against him. On 23 June, the representatives of “LGBT Rights” movement, Nuar Nechaiev and Veacheslav Revin, submitted a similar petition.

On 16 May, the governor in his interview to “Komsomolskaya Pravda,” speaking about sexual minorities, declared the following: “Tolerance?! To hell! Faggots must be torn apart and their pieces should be thrown in the wind!.. This rotten nest must be wiped out!”

On 29 May, the General Prosecutor’s Office transmitted the petition of the gay activists to the prosecutor’s office of Tambov oblast for examination.

On 28 July, “Interfax” news agency disseminated the news that the investigation department for Tambov city of the Investigation Directorate of the Investigation Committee under the Prosecutor’s Office of the Russian Federation had refused to open a criminal case against Betin. The information source explained that the examination carried out by experts had found no elements of offence in the governor’s words. The Investigation Committee emphasized that the experts did not consider the governor’s statements abusive and gave a conclusion that homosexuals were not a social group and could not be considered subject to incitement of hatred or enmity.”

GayRussia.Ru activists appealed that decision. On 6 October, Lenin District Court of Tambov declined the protest. On 13 November, the court of Tambov oblast declined the appeal.

A famous Russian sociologist and sexologist, PhD, I. S. Kon., completely disagrees with the opinion that homosexual minorities are not a social group. In his opinion prepared especially for Lenin District Court of Tambov he writes, in particular, the following:

“Social group is one of the broadest sociological and social-psychological notions used in all social and human sciences. It means any relatively stable group of people with common interests, values, and standards of behavior, who share the feeling of unity. Although the definitions of a social group vary, they usually include such elements as: 1) interaction, information contacts with the help of sign systems (“languages”); 2) name, “label” that indicates group membership and its image in the mass consciousness; 3) identification, membership, self-identification with the group by distinguishing and opposing “us” to “them,” acceptance by the individual of a certain stand in the group and assimilation of certain attitudes specific to it...”

It is important to emphasize that social groups appear not at the pleasure of the state and exist regardless of their approval or disapproval by public opinion. They can be marginal (borderline) or deviant (out of the supposed norm), and this is a relative differentiation.

In a theocratic society with one main, “right” religion, gentiles are considered deviant groups, are restricted and suppressed, which contributes to their further isolation and transformation of purely faith based groups into political faith-based groups. All faith-based groups are equal in a high society, and all those whose faith differs from that of the majority, whether they are gentiles or “separatists,” are considered religious minorities by sociologists. The state does not intervene in these conflicts, and only takes care for them not to grow out of legal frameworks.

Prostitution is considered a social and moral evil by the majority. However, prostitutes (called “sex workers” in the unbiased sociological language) belong to a social and professional group. The modern sociology of childhood sees children not as the object of education, but as a special social group with their own problems and interests. This approach helps to understand the multiplicity of children’s worlds, to develop the notion of “children’s rights,” etc. And no one ever denies the asymmetry of roles, relations, rights and obligations of children and parents based on this fact.

In short, “social group” is a formal term. The ways of its use depend on the social and intellectual context. I have never met the notion of a “classical social group” in professional sociological literature. Based on the above-mentioned, such notion just cannot exist...

“Persons of homosexual orientation” are often called “sexual minorities” in the impersonal sociological language. This notion belongs to the category of social minorities, each of which, naturally, forms a social group. “Social minority” does not necessarily mean a minority based on quantity. It can be a group of people distinguished by their physical or cultural features, because of which they face prejudice and inequality, thus, perceiving themselves as an object of collective discrimination.

Modern homosexuals have a complex system of social and group features: 1) special sexual orientation; 2) name and self-designation (“gays,” “queers,” etc.); 3) group self-actualization, identity, and we-feeling; 4) typical interests, habits, and way of life, which 5) materialize in the activity of various organizations. These phenomena have not appeared at once and all together. When homosexual love was considered a disorder and/or offence, their carriers had no social recognition; their group was socially and legally unprotected, disunited, “unnamed,” “invisible,” but still hated. The abolition of criminal prosecution (in 1810 in France, and in 1993 in Russia) and of psychiatric diagnosis (the American Psychiatric Association did it in 1973, the World Health Organization—in 1990, Russia—in 1999, and China—in 2001) have eliminated the former normative prohibitions. In democratic countries, otherwise-loving people lead an open life, are well integrated with the society, seem to be socially safe (higher level of education, level of delinquency below average), have a lot of their own organizations, including international ones, together with representatives of other sexual minorities (their alliances are called organizations of lesbians, gays, bisexuals, and transgenders—LGBT in abbreviated form) take an active part in the political process. A number of countries (the Netherlands, Belgium, Canada, Spain, Norway, and the Republic of South Africa) have equated same-sex partnerships with legal marriages; others look for compromise forms of their recognition and registration. The World Health Organization and all democratic governments actively cooperate with LGBT organizations in HIV prevention. Marketing experts, who study the tastes and consumer wants of this group, also confirm the fact that this community goes outside the framework of sexual weaknesses...

In order to understand the prospects for homosexuals as a social group, the main question is: to what extent their inherent and/or imputable psychosocial features and properties result from there, allegedly innate, sexual orientation, and to what extent they are a product of a longstanding stigma (indelible disgraceful label), prejudices, and social isolation. Basically, social integration of any minority attenuates their feeling of exclusiveness, transforming their “we-feeling” from total into local one and allowing people feel themselves not like representatives of a shameful minority, but full citizens of their country and members of the global human community, while preserving their individuality.

This long historical process has a very important legal aspect. Despite the fact that the rights of sexual minorities are recognized and protected in democratic countries like the rights of other people, they often encounter manifestations of hostility (homophobia), which particularly affects adolescents, and not only homosexual ones. A number of countries have passed special laws in order to protect homosexuals from violence, discrimination, and defamation.

There are no such laws in Russia. Article 282 of the Criminal Code of the Russian Federation, which punishes “Actions aimed at the incitement of hatred or enmity, abasement of human dignity of an individual or a group of people based on their gender, race, nationality, language, background, attitude to religion, membership in a social

group, if these acts are committed in public or with the use of mass media,” does not provide for the element of “sexual orientation.” However, according to our opinion, the mentioned “membership in a social group,” as well as the entire text of the article expressly implies a wider understanding of this notion rather than a narrower, professional one, such as “police,” “religious workers” or “sex workers.” The law neither specifies the meaning of “race,” “nationality” or “background,” and if consulting special dictionaries the discord will be even greater than in case of the “social group.” However, there is no ambiguity here. The law stipulates that no one should be humiliated and persecuted based on their social and group membership, it does not protect separate social groups, it protects the rights of every individual, regardless of their peculiar features and distinction from other members of the society. That is why lawyers sometimes call all such offences “hate-crimes”...<sup>1</sup>

## 2.4. INVASION OF PRIVACY

Investigation authorities use citizens’ private information in order to intimidate, blackmail them, and to obtain the desired testimony. The criminal procedure legislation contributes to that. In the civilized world, the recognition of the importance of close relations between intimate persons is reflected in the rules of non-witnessing against such persons. However, the Criminal Procedure Code of the Russian Federation appears to be discriminating in this sense due to the following reason. Art. 56 of the Criminal Procedure Code of the Russian Federation, which provides for the basis of the legal status of a witness as a participant in the criminal proceedings, mentions among their rights the right to refuse witnessing against self, their spouse and other close relatives, listed quite exhaustively in p. 4 art. 5 of the Code.

Artiom (27, the Republic of Adygeya) told the following in his interview to Krasnodar regional monitor:

“Everything started last September (2007—*Author*), when my family partner and I were working in the association of country house owners. We were in charge of management, i. e. usual chair duties. And starting from September, a group of people, upon request of the district administration came and started forcing us out from their by various means, i. e. disseminating information about our private life, turning people against us. Finally, they started using the law enforcement system against us. My partner and I were arrested at the end of December. There was a search in our house on that day as well. We have the corresponding issue-related books and movies at home, a complete set of things that speaks about our private life. According to the Criminal Code, it is forbidden to disseminate information about private life. Everyone in the Temporary Detention Facility got to know everything about us on that day as well. There was a provocation, when the police told about our orientation in mass cells. Consequently, we had problems... I was released one month ago—the measure of restraint was changed, but my partner is still there. Our lawyer did not want to get involved in order not to destroy her reputation... There are many rumors going round about us, that we must be killed in Takhtamukaysky District, that we are second-rate people.”

Russian gays and lesbians suffer from the invasion of their privacy by religious organizations. The story of Andrei K. (36, Moscow) is a vivid example of that. Being a religious orthodox Christian and concerned about the compatibility of homosexuality with a full church life, he decided to make a confession to his pastor.

“Concealment of my inner being and of its natural manifestations was similar to imprisonment for me, and I could not endure it. I could not and did not want to pretend and lie any more, always shaking with fear of the day when my sexuality would be exposed and held up to ridicule. I preferred to reveal my inner being by myself, thus, gaining my inner and outer liberty. At the same time, I hoped that my confessor, who was morally and financially

<sup>1</sup> <http://www.gayrussia.ru/society/detail.php?ID=12019>.

supported by me within a number of years, as I used to help him and the Church by my work, experience, and earnings, would give me the necessary spiritual and emotional support,” tells Andrei K.<sup>1</sup>

But the priest demanded to “pull the sin out of the soul,” to hide his sexual orientation, and to discuss those issues with no one except him. However, Andrei K. shared his concerns with several parish members, whom he trusted a lot. The priest found out about it and Andrei K. was anathematized within a week. It was not enough for orthodox activists and they decided to disseminate the information about homosexuality of Andrei K. among his neighbors and acquaintances.

“At that time, in January 2004, I was living with my mother, a Russian citizen, in her apartment. The priest and parishioners used to come to us before the severance. Within less than ten days after that memorable telephone conversation with the news of my anathematization, mail boxes of both the neighbors at my registration place and the neighbors of my mother were full of flyers made in ultra-orthodox nuances, which were explaining the serious danger posed by homosexuals for Russia and its blessed people. The authors called homosexuals “devil incarnates,” “dead frost.” The flyers contained my picture, name, surname, apartment and telephone numbers, as well as the threat warning that I, as a “malicious sodomite,” am dangerous for public health and morality, especially for “young, nascent souls.” One of the flyers contained a caricature of me, where I was pictured as a rat with side-locks sexually abusing a child. The rat had a clash with a glet in the form of a hexagram. There was a slogan below the caricature: “Russian—help!”

After that the K. family experienced various manifestations of aggressive homophobia. They would find up to ten flyers in their mail box every day. They started receiving different telephone calls: some people would ask what was happening, others would be indignant, sometimes they would just laugh or bawl out swearwords together with threats.

“In the block, corridors, lift people would glower at me and my mother with hatred and disdain, ask how we could end up like that. Men would spit in my face, call me “faggot,” throw used condoms into my mother’s mail box and butts under the door. The metal door to my mother’s apartment was upholstered with soundproof material, and this material was cut with knife and impregnated with urine. The walls around our door were covered with homophobic swearwords and offensive pictures.”

Andrei K. and his mother felt strong mental and physical sufferings in that situation. “Andrei was suffering a lot,” writes L. K.

“It tormented him, he was ashamed and felt guilty because I had to share all the attacks and persecutions with him; he always asked me to forgive him for the grief and torture I suffered from, as he thought, because of him... Within that period, from February to July 2004, Andrei started suffering from deep depression and neuroticism, got early gray hair. He had to address to a psychiatrist for professional healthcare, was taking psychoactive drugs. The psychiatrist V. A. Belkin, who started monitoring and treating Andrei, made the following diagnosis: severe depression accompanied by neuroticism. It was the first year when Andrei was not able to celebrate his birthday in August.

I tried to hide my worries and heartache; however, it was not always possible. In order to attenuate the impact on my nervous system produced by actions of orthodox homophobes and neighbors I started, without Andrei’s knowledge, smoking and consuming alcohol (in modest quantities), as well as taking a potent sedative agent—relanium (diazepam). Andrei and I were noticing clear traces of the strongest mental attack on us, as well as of the deepest impact on our nervous system by the events and sufferings. This “mirror” reflection of our own sufferings in the dear person’s eyes oppressed and depressed each of us even more, making our life unbearable.

In addition, as a result of those nervous breakdowns Andrei’s asthmatic attacks became stronger and more frequent. In the nights, he would suffocate and could not stay in the horizontal, spending the night in the armchair. He became a real invalid, the fact proven by the corresponding opinion of the health and social expert commission.

---

<sup>1</sup> Here and elsewhere there are quotes from the testimonies of Andrei K., his mother L. K., and the staff drawn up by a notary in the form of affidavits, transmitted by human rights defenders.

My health and state of mind were affected as well. In March 2004, I was declared an invalid of group II, but it was just the beginning. The events, to be more exact suppression, persecution, and torture, were developing with gathering force.

Andrei could not get anywhere within that period, he could do nothing, he did not want to wake up and start a new day in the mornings.”

Soon, beside the harassment on the part of our neighbors we were subject to pressure on the part of authorities and local administration. Old neighbors, who daily gather on the benches near the block, told everything to the sector police officer, Major O. V. Panov, and wrote a letter to the head of the administrative board of Chertanovo-Severnoye District of Moscow City, Soloviev. After a while, an enlarged copy of the reply of the head of the administrative board was posted up near the entrance, where the house tenants were recommended to “provide every possible assistance” to the sector police officer in order “to counteract Andrei K.’s anti-social activity aimed at demoralizing the environment in the residential block. After that the sector police officer started calling K. to the sector police office, demanding to change the way of thinking and life, otherwise promising “to fight the piece out with me.”

The chairman of the house committee, E. A. Fedorov, suggested convoking the court of comrades in order to discuss the “immoral issue” and measures of “social influence” on the “degenerate.” Fedorov actively contributed to the atmosphere of intolerance created towards the K. family. He used his power of controlling porters in order to collect operational information about K.’s visitors. The porters would ask every stranger about the apartment they went to. If the visitors mentioned the K.’s apartment, the porters would ask them to show their documents and copy their data. They would inform the chairman of the house committee about the visitors, and the latter, by L. K.’s assumption, would pass the information to the police. One of Andrei’s friends, David R., describes the situation in the following way: “At the entrance, the porter on duty always asked me what apartment I was going to; when hearing the number he would give a telephone call: “The bastard has a visitor.”

The Head of the Board No. 2 of the Directorate for High-Rise Administrative and Residential Building Administration, V. Iu. Vostrikov, through his subordinate, supervising engineer, accused K. of intentional destruction of municipal property (walls of the staircase landing) and demanded to repair the damage, as well as strongly recommended L. K. “not to pile on the agony in the house.” At the same time, Vostrikov refused to extend the garage rental agreement based on which L. K. had used the space on preferential terms for many years. He said he would not extend the agreement on any terms, because he did not want the things happening in the house to repeat in the garages.

Andrei K. together with his friend, a citizen of Belarus David R., decided to leave for T. village in Yaroslavl Oblast and to live in the house of Andrei K.’s mother.

The deacon (now, the priest) Evgenii Tremaskin is famous for fighting against “non-traditional cults” and “people with non-traditional orientation.” He lives and works in Moscow, but often comes with his family, followers, and friends to T. village. By Andrei’s assumption, it was Tremaskin who disseminated the information about Andrei’s sexual orientation and his anathematization among village residents.

Andrei K. tells us:

“My private life with David R. was accessible to our neighbors’ eyes. I saw many parish members coming to the village in summer; they would demonstratively ignore me, stopped greeting me, would not repay my salutation and turn their faces away when meeting me in the street or in the forest. In the evenings, passing by their houses, I often heard canticles and prayers against “the sin of Sodom,” as well as anathematization of “sodomites” from

their open windows. On 30 October 2005, at around 7:00 PM, our house was intentionally destroyed by arson<sup>1</sup>. Two days before, David R. and I left for Moscow. I came suddenly down with the flu in Moscow, and we could not come back. We left the radio and light on in the village house, for the others to think that we were at home, hoping that it would prevent them from destroying the garden patch or stealing something.”

Andrei K. and David R. had to return to Moscow, to the K. apartment. David R. tells about their situation within that period:

“Our appearance in Andrei’s block as permanent residents aroused a negative reaction. Once, when one of Andrei’s neighbors from the top floor saw me going down stairs, she threw a bucket of dirty water used for floor cleaning over me... During the days, when Andrei would leave for work, I had to meet the sector police officer, the block supervisor, who would inequitably question me about the nature of our relationship with Andrei, what exactly we had in common, would check my registration (residence permit). Based on the fact that I was not registered at the place of my stay, I would be forced to police station for “identity establishment” and hold their groundlessly incomunicado for 10–12 hours without water and food. At that, the police would not undertake any actions to establish my identity as they would have no doubts with regard to it and the authenticity of my passport. They would catch at any excuses to make Andrei’s and my life a burden. Besides, we would always receive anonymous door, on-door speakerphone, and telephone calls. Andrei bought a video door phone, video peephole, and telephone answerer; however, we would still receive calls on our mobile phones, they would knock instead of ringing at the door. We had to create a maximum isolation from the outer world—to put an additional soundproof door, to draw heavy blinds.”

“In the middle of June, Andrei K. continues the story, I was surprised by the fact that my neighbors from apartment No. 10, a pensioner couple Tamara and Valerii Odintsov, who would gladly inform the police and all those interested about details of our life, suddenly cleared out, which was not typical for them at that time of the year. In the morning on 12 June 2006, a holiday, the sector police officer and a representative of the Sanitary and Epidemiological Service in the white coat rang at our door and told they wanted to check the “sanitary and epidemiological situation” in my apartment “because of frequent citizens’ appeals and complaints.” David and I decided not to open the door, and the woman in the white coat put on a respirator and carried out “disinfection”—she sprinkled the door and the adjacent corridor with strong solution of toxic chemicals with choking odor. With thirty minutes it was impossible to stay in the apartment, I had asthmatic attacks, and we had to leave the house.”

## 2.5. VIOLATIONS AND ATTEMPTS TO RESTRICT THE FREEDOM OF EXPRESSION

According to art. 10 of the ECHR, “everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” A free state and democracy cannot exist without a clear guarantee of the right to freedom of expression, protected by independent and unbiased courts. This has been said in the decisions of the European Court of Human Rights many times.

The court declared that art. 10 protects “not only information or ideas that are accepted kindly or viewed as harmless or are received with indifference, *but also ideas that offend, shock or worry the state or a part of the population*. These are the requirements of pluralism, tolerance and breadth of views without which the democratic society cannot exist” (highlighted by us—*Author*)<sup>2</sup>.

<sup>1</sup> The fact of incendiary crime was confirmed by fire inspection.

<sup>2</sup> *Handyside v. the United Kingdom*, 1976; *Lingens v. Austria*, 1986; *Oberschlick v. Austria*, 1991.

The term “expression” does not include only the freedom of speech, written or oral, but also the areas of painting <sup>1</sup>, images <sup>2</sup> and actions related to the expression of ideas or transmission of information. Even the form of clothes can be subject to art. 10 in some circumstances <sup>3</sup>.

The freedom of expression perceived in this way is systematically violated in relation to Russian homosexuals. Moreover, there are attempts to legalize restrictions of the freedom of expression for them.

These are insistent attempts to introduce the ban on the so-called “propaganda of homosexuality” in the legislation and in the law enforcement practice.

While this idea used to be fostered by several marginal politicians in the past and was not taken seriously by many people, today the notion of “propaganda of homosexuality” is not only part of the daily vocabulary of conservative politicians, but is also applied in practice despite the legislation in force.

In March 2006, the prosecutor’s office of Rostov oblast warned two Rostov TV stations—TRC “Pulse” and “ExpoVIM” Company for the broadcasting of SMS in TV-chats “that contained propaganda of non-traditional sexual orientation.” The warning issued by the prosecutor’s office said that “propaganda of homosexuality in Russia is forbidden.”

Another example is the refusal for state registration of “Rainbow House” Tyumen organization. The official letter of the Federal Registration Service Administration for Tyumen oblast, Khanty-Mansiisk and Yamal-Nenets Autonomous Areas says: “The activity of an organization related to the propaganda of non-traditional sexual orientation can result in the undermining of the security of Russian society and state.” The authors also say that the propaganda of non-traditional sexual orientation threatens the territorial integrity of the Russian Federation.

The ban on the dissemination of information on homosexual relations has already been legalized in Ryazan oblast. The oblast Duma adopted the addenda to the local law on administrative contraventions on May 24, 2006: “Article 3.13. Public actions aimed at the propaganda of homosexuality (sodomy and lesbianism) among the minors.”

A group of human rights defenders <sup>4</sup> addressed to the General Prosecutor’s Office of the Russian Federation and received the following explanation regarding the above mentioned facts: “It has been determined that the reason for issuing warnings to the administration of TRC “Pulse” and “ExpoVIM” Company” broadcasting on the territory of Rostov oblast has become the violations of the legislation in force, which aims to protect the interests of minors (the broadcasting of TV chats on the basis of SMS with intimate offers, including those that propagandize non-traditional forms of sexual orientation and pervert sexual behavior).” In this explanation, the General Prosecutor’s Office refers to international commitments of the Russian Federation within the Declaration of the Rights of the Child of November 20, 1959, the UN Convention on the Rights of the Child of November 20, 1989, as well as the Federal laws “on the main guarantees of the rights of the child in the Russian Federation” and “on the medias.” However, the term “propaganda of homosexuality” is not contained in any of these documents.

It should be noted that sexual education of minors and the development of respect towards individual differences is not only a right, but also an obligation of society and state. This also implies the provision of true information on homosexuality to them in adapted

<sup>1</sup> Muller v. Switzerland, 1988.

<sup>2</sup> Korkher v. Austria, 1993.

<sup>3</sup> Stevens v. the United Kingdom, 1986.

<sup>4</sup> <http://lgbtnet.ru/news/detail.php?ID=2961>.

forms, of course. In 2000, PACE recommended the member-countries to combat homophobia, especially in schools through education. It is clear to any person of good sense that the education of tolerance and sexual education do not have anything to do with the involvement of minors in sexual relations.

In March 2008, the heads of the main Russian protestant churches wrote a letter to the general prosecutor Yury Chaika requesting to close the “2×2” TV station. The reason was “hidden and open propaganda of homosexuality and pedophilia, asocial lifestyle, as well as multiple vices.” The leader of Nizhny Novgorod Muslims Umar-khazrat Idrisov expressed his willingness to join the protestant initiative. The letter was also supported by the Congress of Jewish Religious Organizations and Unions of Russia.

A similar request was sent to the Investigatory Committee of the General Prosecutor’s Office of the Russian Federation soliciting the opening of a criminal case in relation to the broadcasting by the “2×2” station of the “South Park” cartoon serial by the Associated Russian Union of Christians of Evangelical Faith in September 2008. The letter asked to recognize the cartoon serial as an extremist one and prohibit it on the Russian territory. According to one of the protesters’ leader, “South Park” contains “hidden and open propaganda of homosexuality and pedophilia as norms of sexual relations.”

After a check, the Basmannaya district prosecutor’s office of Moscow city sent a request to the court to recognize the content of one of the series of the “South Park” cartoon serial broadcast by the “2×2” TV station as extremist.

At the beginning of June 2008, three committees of the State Duma of the Russian Federation made public the draft Concept of the state policy on spiritual-moral education of children<sup>1</sup>. The MPs expressed their intention to produce sixteen draft laws in autumn among which the introduction of criminal liability for the propaganda of homosexuality and “other forms of sexual deviations” among children.

The authors of the “Concept” say that one of the main tasks of the state policy is: “Prohibition by law of propaganda of homosexuality among children, including of presentation of homosexuality as a socially or morally acceptable, approvable or normal form of sexual relations. The establishment by the law of criminal liability for propaganda of homosexuality and other forms of sexual perversions (deviations) among children below 16.” Thus, the intention is to ban the dissemination of modern knowledge on homosexuality as norms of sexual behavior that is based on the position of the World Health Organization in particular, and does not represent a threat for minors.

One of the provisions is to prohibit categorically the dissemination of views on unisexual family unions (partnerships) “as a normal, social acceptable or permissible form of the family.”

One of the draft laws proposed by the MPs—“on the introduction of amendments in certain legislative acts of the Russian Federation to increase the efficiency of the system of gender-based role education and prevention of HIV-infection and other sexually-transmitted diseases among children.” It implies the introduction of the ban to use in the education system programs and manuals that form views on the homosexuality (male or female)... as socially normal or moral norms of sexual behavior and sexual relations or as a modern and fashionable lifestyle.” A similar ban is proposed on the content of extra-curricular activities.

It should be mentioned that the legislators do not define the notion “propaganda of homosexuality.” The only definition is given in Chuiev’s notorious draft law: propaganda is “public

<sup>1</sup> Text: <http://state-religion.ru/moral/concept/17-koncepcija-gosudarstvennoj-politiki-v-oblasti.html>.

demonstration of a homosexual lifestyle and homosexual orientation” in publicly shown productions and in the media. According to this definition, the publication of the works of Oscar Wilde, Plato’s “Dialogues,” some of Shakespeare’s sonnets, etc. could be considered a crime. In addition, the dissemination of any information required for the full-fledged life of gays and lesbians will become impossible.

Experts confirm: the notion “propaganda of homosexuality” makes no sense. I. S. Kon. says:

“I do not understand what propaganda of homosexuality means. Is there anybody saying that homosexuality is better than heterosexuality? The issue of the selection of sexual orientation is not an issue of fashion. Something like this can exist and does exist in certain youth subcultures, where they may represent one thing or another. As for serious processes, they have deeper organic reasons. And if we refer to what is happening in our country, I see a homophobia campaign, requests to prohibit or close something, etc. This is obviously contradicting the general culture tendencies and our legislation. Unfortunately, this is related to a broader phenomenon—the consolidation of xenophobia, i. e. hate and hostility to other people. This is a really dangerous phenomenon that has to be combated”<sup>1</sup>.

## 2.6. DISCRIMINATION AT WORK AND EMPLOYMENT

Direct discrimination based on sexual orientation—dismissal or refusal of employment—is quite rare, but it is not the result of employers’ tolerance. 78.6% of gays surveyed by QGuys. Ru hide their homosexuality from their employers and colleagues. Only 17% reported that they did not hide their orientation at work and had not had any problems in that regard. The share of the dismissed or those refused employment is lower in towns, and at the same time the share of those who hide their orientation is higher there.

Gays and lesbians who work (or would like to work) in state institutions and organizations, as well as in the education system are most vulnerable. The respondents surveyed in the course of monitoring pointed out repeatedly that people who take state service undergo the procedure of verification whether they are “normal” in their private life. If company management learns that an employee is homosexual, they often take measures to get rid of such employee.

Andrei K. (Moscow, 36 years old, see above) found himself in a similar situation. In December 2005, he managed to get a job at a state institution—Moscow City Council of Public Law Enforcement Units (MCC PLEU) directly subordinated to the government of Moscow—as president of the Public Law Enforcement Unit (PLEU), micro-district No. 6, Presnensky district of Moscow City. The employment order was issued officially only on 3 March 2006.

The employer did not know that Andrei K. was a homosexual at employment. However, after his cohabitation with David R. went public, Andrei K. became subject to pressure on the part of MCC PLEU management.

This is how he describes it:

“The head of the Organizational Committee of the Administrative Board, A. Ya. Korotun, who supervised our work called me and my direct superior, president of PLEU, Presnensky district, V. N. Andrienko, to his office and started shouting and demanding in strong language that I should radically change my lifestyle (he referred to my

<sup>1</sup> [http://www.gayclub.ru/society/article.php?PAGEN\\_7=2&PAGEN\\_3=2&ID=2981](http://www.gayclub.ru/society/article.php?PAGEN_7=2&PAGEN_3=2&ID=2981).

private life), as my behavior throws a shadow on the law enforcement system, government bodies and Presnensky district: "I am not going to get into troubles because of you and sit here waiting until somebody goes to the Mayor or Moscow government directly... if you fail to make corresponding conclusions, you are going to lose not only your job, but also quiet and will see what insubordination to the Motherland means!.." It turned out that all the addresses of inhabitants together with copies of leaflets had got to Korotun. I was familiarized with them. Those were letters of neighbors, reports of sector police officers, petitions of the Veterans Council, leaflets. I said I would rather die than break up with David. "Damn you, son of a bitch!" was the reply of Korotun and he threw banana skin at me. "Do not come back without repentance" he finished."

As a result of a nervous breakdown, I started suffering from continuous intractable attacks of asthma, the course of my chronic illness (bronchial allergy) worsened extremely. David had to call the ambulance that brought me to the City Clinical Hospital No. 61 in an extremely grave condition.

When I returned from the hospital, Andrienko proposed me to write a letter of resignation of my own free will. I refused. Andrienko warned that I would be fired any way, but would not be able to get employed somewhere else in that case, "they will keep mocking at you."

In order to find a pretext for my dismissal, Andrienko called two most loyal of his subordinates, members of "Edinaya Rossiia," and asked them to sign an act of my alleged absences without leave. However my colleague, N. V. Makeiev, refused to sign the false document. Andrienko told that two signatures would be enough.

I was fired soon, but appealed the decision in court. Pressure and discrimination grew into persecution and torture."

These facts are also confirmed by Makeiev:

"Andrei K. recommended himself as an honest, open and a man of principle straight away, who always treats his duties with the greatest extent of responsibility. His is distinguished by kind-heartedness and amiability, readiness to help people, colleagues at work. I always considered him the most appropriate employee for the position he held in 2006. He was one of the best micro-district PLEU presidents.

Andrei K. had never displayed his sexual orientation, however due to his honesty and openness he was unable to deny when asked about it. That made him rather exposed and vulnerable.

Soon after Andrei K. began to work in PLEU, the management of the Administrative Board and PLEU learned that he belonged to the sexual minority, was a homosexual. Information about his private life and circle of friends was received from sector police officers at his place of residence and place of work, as well as from the dwellers of the block of flats Andrei K. lived in. In particular, the sector police officer, N. V. Dyuzhev, had several leaflets distributed in the block of Andrei K. and calling to force actions against Andrei K.

When Andrei K. was in hospital, our direct superior, V. N. Andrienko, held a meeting to inform all the PLEU staff about the information he had received and asked for their opinion. Having made sure that colleagues condemned Andrei K., he suggested drawing up a collective address to the MCC PLEU about the non-conformity of Andrei K. to the position he held and demanding his dismissal. That address was signed by everybody except me.

Shortly after his discharge from the hospital, Andrei K. came back to his duties and started becoming subject to systematic pressure and insults. Andrienko and Korotun would always humiliate Andrei K. within meetings and kept bullying him.

I understood that the management of the Administrative Board and PLEU had made a decision to fire Andrei K. and thus get rid of "moral responsibility" for the behavioral pattern adopted by Andrei K. in his life. The reason for his dismissal was intolerance to minorities. However, Andrienko was looking for a way to make Andrei K.'s dismissal look grounded. I had a possibility to witness how several times Andrienko insistently proposed Andrei K. to write a letter of resignation of his own free will, appealing to the power of persuasion or trying to threaten. As a result, Andrei K. was dismissed on the ground of an act drawn up by Andrienko on his alleged absences without leave, which was ridiculous, since within that period Andrei K. did not have a workplace to be absent from it.

In July 2006, Andrei K. proposed to the lawyer R. Z. Mamiev to become his representative in court. The latter drew up a declaration to the Tverskoy district court of the City of Moscow.

According to Mamiev, the strong influence of the executive power on the court was felt since the very beginning of the proceedings. They would refuse to accept the declaration without any ground, would delay the proceedings, and then displayed open unwillingness to decide on the merits and grant judicial defense to the defendant.

The declaration of Andrei K. was not considered for three months. Within all that time, neither the plaintiff nor his lawyer could get any information from the judgeship. All this despite the monthly term for claim acceptance set by the criminal procedure code, which is usually complied with by courts, especially within the last years, since the Supreme Court of the Russian Federation has started monitoring compliance with the procedural periods by courts of general jurisdiction more seriously.

After such a long period of time, the court decided to leave the claim unattended motivating by the fact that Andrei K. had not appeared before the court for hearing. When drawing up appeal against the order of the court, the lawyer managed to establish that no summon had been forwarded to Andrei K. except for one that he received on the day of the sitting, well after the time it had been fixed for, while they from the court office on civil cases would give no information to Andrei K. on the telephone.

When the lawyer appealed to the higher court, Moscow City Court, "strange changes appeared in the case papers containing evidence I was referring to, which destroyed all our evidence." So, the postal stamp on the envelope the declaration came to the court was blurred over so that the date could not be seen, and the date next to the signature of the receiver was corrected. At that, the case papers lacked note on issue of the case for familiarization to the defendant or their representative. Such modifications could have been introduced only by court officers.

Mamiev tells: "When, for no explicable reason, the claim I had filed was satisfied, the federal judge of Tverskoy district court, L.I. Bykovskaya, that was in charge of the case of Andrei K., was just as surprised as myself. She invited me for a discussion and asked how well I knew Andrei K. and what information I had about his "moral image." I answered that my relations with Andrei K. were limited by my professional activity as a lawyer and I did not have the right to judge about the moral image of my client. As for the hidden motive of Andrei K.'s dismissal that was related to the "clearing" of state institutions from representatives of sexual minorities, I knew about it.

After one sitting to solve procedural matters, the judge invited me again and asked to file a request to transfer the case to another court, where we would have more chances: "Under the given circumstances, I will not be able to sustain your case, so if you do not want a case dismissal, you better take my advice and file a request."

Andrei K. agreed to transfer the case to Khoroshevsky district court of the City of Moscow, to the federal judge Saltykova.

In March 2008, the case was adjudged and the court made the decision on dismissal of all claims. On 26 May, the court of cassation, Moscow City Court, kept the decision of Khoroshevsky district without change, and dismissed the cassation appeal."

As it has already been mentioned, disclosure of sexual orientation of a person most frequently leads to their dismissal in Russian towns, after which it is practically impossible for the affected people to find a new job in the same town. This is particularly testified by addresses to the Russian LGBT network.

Aleksey (Volgograd oblast): "I had worked as locksmith at an installation department from November 2005 to December 2006. I have category V. Upon the request of an engineer of sector I, they do not sign agreements on carrying-out of work. I have never made special efforts to hide my orientation. A year after I had got a job with the organization, my direct superiors found out I was gay. And despite the fact that I had not received a single reproach within the entire year, I was refused renewal of my contract. In a private discussion, they just told me: "You have wrong orientation."

Alexandr (40, Pskov oblast): "I had worked at a secondary school in Pskov oblast. Since 2003, constant mockery began on the part of teachers, students and school administration. One of the teachers told me directly that I

should go to prison and generally be isolated from the society. The circumstances did not allow me continue working there. At the employment office, they told me I better left the town. The arbitrariness started after I had openly declared about my orientation. I had been working at that school since 1984.”

There are rare cases when homosexuals manage to restore their labor rights through the court.

By decision of 20 September 2005, Frunzensky district court of Saint-Petersburg invalidated the discriminatory decision of JSC “Russian Railways” concerning a candidate who was refused registration for training just because his military service record card contained a note on a “mental deviation” made solely on the basis of his homosexuality. In 2003, he was taken off the books at the psychoneurological dispensary. However, the military enlistment office refused to remove the note from the military service record card, still considering him unfit for military service because of homosexuality, which they classified as “other gender identity disorders” that time (when the 2003 List of Diseases pointed out directly that homosexuality was not a ground for limiting fitness for the military service).

In 2003, the plaintiff addressed to the polyclinic of Oktyabrsky Railway for a medical opinion to be able to register for courses of train attendants. They refused to find him fit for the profession of train attendant at the polyclinic on the ground of the note in his military service record card and the fact that he had been registered with the psychoneurological dispensary.

The psychiatric human rights center representing the interests of the plaintiff in the case of the disputed decision of the railway polyclinic claimed that such a decision violated the right to education and the right to labor guaranteed by the Constitution of the Russian Federation. Moreover, the Psychiatric Human Rights Center also sustained that homosexuality of the applicant should never be considered as a mental disorder.

Having found the decision of the medical expert commission of the state healthcare institution with regard to the applicant invalid, Frunzensky district court made two important conclusions:

1. The court found the practice of using military record to limit human rights illegal. The court specified that the military service record card was the military record document and its data should be used exclusively for military record and not for determining medical contra-indications to labor activity. The court noted that the federal legislation obliges employers to consider reports on absence of psychiatric contraindications issued by authorized healthcare institutions only, and in that case the applicant had the report of the psychoneurological dispensary on absence of any contraindications, which was illegally ignored by the Railway polyclinic.

2. The court indicated that “perverse psychopathia” the plaintiff was diagnosed with in 1992 was based on his homosexual orientation only. Thus, the court confirmed it once again that homosexuality was not a mental disorder. In particular, the court decision stated: “The diagnose of “perverse psychopathia” was entirely based on the former opinion that homosexual orientation was one of pathological personality conditions and was a disease, while there were no other grounds for diagnosing the plaintiff with mental disorder, then such diagnose could be removed without any special hospital or even ambulatory examination. The grounds would be the mere fact of exclusion of homosexuality from the list of mental disorders and acknowledgment of the latter as a norm. Homosexuality is not considered a mental disorder any more...”

On 28 December 2004, Dzerzhinsk district court of the City of Yaroslavl heard the case of Elena Korneva who had been dismissed from her position as educator in a kindergarten with the official motivation “for health reasons,” while at the court sitting the director of the kindergarten explained that he had dismissed the employee just because he was a lesbian.

“I could not keep her at our kindergarten for the reasons of morals and virtue,” said the defendant. The court invalidated the dismissal and restored the plaintiff to her rights.”

## 2.7. LIMITATION OF FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

The ban on 2006–2008 peaceful marches in defense of the rights of sexual minorities in Moscow was openly motivated by the authorities by the unacceptability of its goals, making reference to religious dogmas like to binding norms. At the same time, the Moscow Government did not impede official pickets with homophobic slogans not coordinated with them. Thus, they violated the principle of equal rights and freedoms for all the citizens, in particular, the right to peaceful demonstrations and pickets.

On 18 April 2008, Gay Pride organizers submitted ten notifications about public activities planned for 1 and 2 May to Moscow Mayor. On 22 April, other 15 applications were submitted for 3, 4, and 5 May. “In the nearest future, we are going to inform Moscow authorities about organization of five gay marches per day until the end of May,” the organizers declared at the end of April.

On 23 April, Moscow Mayor’s Press Secretary Sergei Tsoi said in its interview to “Interfax” Agency that Moscow authorities would not allow carrying out unauthorized events for sexual minorities planned for the beginning of May in the capital. He stated: *“On behalf of the Mayor and Moscow Government I declare that the city government, as within the previous years, will be resolute and uncompromising in suppressing the attempts to carry out those activities, as the absolute majority of the society does not accept such kinds of manifestations, gay way of life, and their philosophy.”*

On Friday, 25 April, the organizers received the official refusal to authorize the gay marches planned for 1 and 2 May in the capital; however, the letter signed by the deputy head of the Moscow Directorate for Security Activity Coordination, V. V. Oleinik, contained an error in the date: it was written 2007 instead of 2008.

The letter “on behalf of the Moscow mayor” stated that the goals mentioned in the application raised negative reaction on the part of the society, and such public activities could disturb public order, which represented a threat to safety of the participants: *“Based on the norms of the International Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, in particular Art. 11 (freedom of assembly and association), according to which the right to peaceful assembly can be restricted in the interests of public order, in order to prevent disturbances, to protect health and morals, as well as the rights and freedoms of other people, I would like to inform you that the mentioned marches are not authorized.”*

It is worth mentioning that such interpretation of Art. 11 of ECHR clearly contravenes the explanations given by the European Court of Human Rights. In May 2007, the Court made a unanimous decision on the ban on 2005 gay pride in Warsaw, declaring that it had violated Art. 11 of ECHR. The Court explained that Art. 11 did not allow banning gay marches and mentioned the obligation of the authorities to ensure safety of such activities.

On 28 April, the gay pride organizers appealed the bans by the city authorities on ten marches planned for the beginning of May in Tver District Court.

On 16 May, the Moscow gay pride organizers sent a letter to the President of the Russian Federation, D. Medvedev, asking him to protect the rights of LGBT community and to stop discrimination against sexual minorities by Moscow Mayor. In a separate application, they asked to authorize the march in Alexandrovsky Garden, under the jurisdiction of federal authorities, planned for 31 May. On 28 May, the Administration of the President of the Russian Federation informed the applicants that it had ordered the prefect's office of the Central Administrative Okrug of Moscow to coordinate the carrying out of the activity on one of the sites of the capital, where public demonstrations were usually held, as well as to ensure safety of the participants.

On 1 June, at 1:00 PM, around 30 gays, lesbians, and their supporters raised their banners and rainbow flags by P. I. Tchaikovsky monument near the Moscow Conservatory in Bolshaya Nikitinskaya Street. "Homophobia Is a Part of Xenophobia" and "The Rights of Sexual Minorities are Human Rights" was written on one of the banners. Besides, the demonstrators raised a rainbow flag in the form of a sail. Since the gay pride participants gathered not in the announced place, neither the police nor neo-Nazi and fundamentalist opponents had time to do anything. The picket lasted for twenty minutes.

In 2007, two community-based organizations of sexual minorities "Radujny Dom" (Tyumen) and "Favorite" (Omsk) got refusal of state registration.

In the first case, the grounds for the refusal given by FRS officials were of express homophobic nature.

The foundation of the Tyumen regional community-based organization "Radujny Dom" was announced in 2005. They declared the following goals of the activity: protection of the rights of people with homo- and bisexual orientation, their social and psychological adaptation, consolidation of their self-respect and trust, provision of the necessary legal, social, and economic rights; struggle against discrimination based on sexual orientation, promotion of tolerant attitude towards people with non-traditional orientation; elimination of homophobia from public conscience, promotion of an open discussion on homosexuality in the society; HIV prevention, supporting homosexuals living with HIV and AIDS.

During 2006, FRS Office for Tyumen Oblast, Khanty-Mansiisk and Yamalo-Nenets Autonomous Area refused state registration of "Radujny Dom" twice. Among the reasons for refusal in the official letter to the head of the organization, A. Zhdanov, they stated: "*The goal of the organization is to protect the rights and freedoms of people with non-traditional sexual orientation. The objectives stipulated in the Statute aim at achieving this goal, so their fulfillment leads to promotion of non-traditional sexual orientation. The activity of the organization promoting non-traditional sexual orientation can result in security subversion in the Russian society and the state because:*

- *Spiritual values of the society are undermined;*
- *The sovereignty and territorial integrity of the Russian Federation are affected due to population reduction.*"

In January 2007, "Radujny Dom" received their third refusal from the FRS regional office. There were new "arguments" added to the above-mentioned reasons. In particular, the officials consider that promotion of non-traditional sexual orientation attempts against the state-protected institutes of family, marriage, that it can incite social and religious hatred and enmity. Besides, lack of pagination in the Statute was also considered a serious non-compliance that did not allow registering the community-based organization. It was referred to as "unreliable data contained in the presented documents."

On 18 April, Russian FRS agreed with the decision of their regional colleagues with reference to the expertise of the Statute of “Radujny Dom” carried out by the Tyumen Legal Institute of MIA. According to that document, the Statute contained “features of extremist nature.” That expertise abounded in absolutely absurd statements. Tyumen lawyers, in particular, decided they were quite competent sexologists and offered their own hypothesis on the origin of homosexual orientation. In their opinion, it appears in people with “traditional sexual orientation” as a result of “propaganda.”

According to the “Kommersant-Ural” newspaper, Tyumen officials admit in private discussions with journalists that the Federal Registration Service will keep coming up with new motives to refuse registration of the gay organization. *“Our society is not ready for a radical change of mindset. Gays are too flamboyant in Tyumen, religious groups will always hold it against them, so it is rather unlikely to register such an organization.”*

A professor of Moscow State Law Academy, expert of the Independent Expert Legal Board, Doctor of Law Boris Strashun, has drawn up an independent opinion on the refusal of registration of “Radujny Dom.” In particular, he notes: *“Is the Statute really that horrible, and does an association of three people, which it is for the moment, threaten with such disastrous consequences for the country? They are not talking about any propaganda of non-traditional sexual orientation, RD founders are only trying to help representatives of sexual minorities to unite and protect themselves from discrimination. While the statement that activities of RD could undermine the sovereignty and territorial integrity of the Russian Federation due to population reduction, are just ridiculous. The reasons for population reduction in the Russian Federation are not related to non-traditional sexual orientation of its smallest part: it existed even when the population number was growing. If applying the logics of the Office, such people should be removed from the society whatsoever. It is also not clear how the statutory activity of RD “can incite social and religious hatred and enmity.” It looks as if the Office were afraid of something they did not know what, and blinded by that fear they violate constitutional rights and freedoms of citizens, first of all, their right to assembly.”*

The lawyer representing the interests of “Radujny Dom,” legal analyst of inter-regional human rights association “AGORA” Ramil Akhmetgaliev declared: *“The FRS has abused its authority. They decided to determine which organization was extremist and which was not without the court. The refusal of FRS is illegal and violates the standards of freedom of assembly of the Constitution of the Russian Federation and the European Convention on Human Rights. If FRS officer would read the Statute of “Radujny Dom” carefully, they would not have a reason to state that organization threatened stated security.”*

On 24 May, Akhmetgaliev petitioned to the Basmany Court of Moscow appealing the decision of Russian FRS.

On 20 August, the head of “Radujny Dom” filed a claim with the Central district court of Tyumen and requested to invalidate the refusal of the FRS Office for Tyumen Oblast, Khanty-Mansiisk and Yamalo-Nenets Autonomous Areas to register the organization.

The hearings took place on 26 October in the Tagansky Court of Moscow under the judgeship of M. Yu. Kazakov. The lawyer of the complainant, Irina Khrunova, pointed that FRS not only failed to invalidate the illegal decision of the territorial body on refusal of registration of a community-based organization, but neither considered it necessary to give a full answer to the grounded complaint of “Radujny Dom” representative limiting themselves to a formal reply. Despite the documents and arguments brought in by the lawyer, the court decided to dismiss the claim of the president of “Radujny Dom” A. Zhdanov.

After the announcement of the court decision, a State Duma deputy, member of the Parliamentary Commission on Women, Family and Children, Nikolai Bezborodov, declared that we should not protect the rights of sexual minorities at all, otherwise “we start promoting this minority.” The deputy also said that the existence of gay and lesbian organizations can lead to “clashes in our society,” including religious ones. “Registration of such associations undermines the foundations of national security in the state,” concluded Bezborodov.

On 7 November, the Central district court of Tyumen dismissed the claim of Zhdanov against the FRS Office. The decision was appealed in Tyumen oblast court. The latter confirmed the decision of the district court, which thus came into effect.

On 3 March 2008, Zhdanov filed a claim with the ECHR.

The case of “Radujny Dom” has received a large public attention both in Russia and abroad. The case of the organization was covered in the reports by Human Rights Watch, Human Rights without Frontiers, Youth Human Rights Movement, and Moscow Helsinki Group. Amnesty International also makes reference to illegal refusal or registration of “Radujny Dom” in one of its reports.

The “Radujny Dom” case clearly shows that Russian state, represented by its institutions from local administrations and district courts to supreme legislative power, not only brings in absurd and ignorant motives and intentionally refuses equal civil rights for sexual minorities, including the right to create community-based organizations, but also does not admit the thought that gays and lesbians can stand up for their rights in a civilized way.

## **2.8. DEFAMATION AND STIGMATIZATION BY MASS MEDIA**

### **2.8.1. The main orientation of publications**

In Russia there is no discourse about LGBT issues. The subject of homophobia and discrimination based on sexual orientation is almost never discussed. The publications in mass media related to LGBT issues are scandalous, biased and, generally, contain the so called “hate speech.”

In most of the publications, in which the author’s opinion is overtly expressed, the privileges of heterosexuals are emphasized, based on the fact that LGBT are a minority and the conclusion is made about the legitimacy of limitation of their rights. A lot is written about the danger of being part of the “homosexual community,” which involves mental disorders, HIV and other illnesses and risks.

The reports which do not contain the author’s opinion on the issue are, however, riddled with phrases demonstrating a negative attitude or unfamiliarity with the subject.

Many publications contain negative opinions of church members, politicians and all sorts of “experts” about LGBT.

Despite various events which happened during the assessed period, one way or another, related to LGBT, most of them were not correspondingly covered by the press. We will repeat that the mass media is mostly attracted by scandals (Moscow gay-pride, criminal cases etc.).

It is worth mentioning, that currently there is, practically, no culture of writing reports about LGBT issues. Most of the publications on this subject contain mistakes, determined by widespread stereotypes related to LGBT and by the lack of knowledge of the subject and of the terminology.

The monitoring also revealed a predominance of masculinity in the reports on LGBT issues. Only in a small number of publications lesbians are mentioned. Usually, the expression “non-traditional love” refers to relations between men.

### 2.8.2. The most discussed subjects

One of the most popular subjects was the Moscow gay pride. Some of the titles were: “Moscow gays make another attempt to organize a gay pride,” “The organizers of the Moscow gay pride were refused again,” “The court did not satisfy the gays” etc.

The action “The day of silence” organized in Sank-Petersburg was another subject of discussions. Both events were organized almost at the same time, but, compared to the one organized in Moscow, this one was authorized. Many mass media institutions paid attention to that. According to comments posted on blogs, forums and other types of social networks, the activists did not succeed in informing the society about their problems. Most of the reports covered the event superficially. Usually, they did not give any examples of homophobia or discrimination of LGBT. In many internet media, which offer the opportunity of commenting on their publications, many homophobic and even extremist statements were posted, about the organizers and the entire gay-community.

The Russian “Day of silence” also attracted the attention of journalists. It is worth mentioning the journalists’ calm manner of covering the position of the activists—the ‘hate speech’ was almost absent, as well as the lack of knowledge of the subject, traditional mistakes made by journalists did not critically affect the integrity of the information.

The LGBT film festival “Side by side” organized in St. Petersburg was often mentioned. A discussion was initiated immediately after the publication by several internet media of the statement of the film actor and president of the Association of Cinematographers of Slavic and Orthodox Peoples, Nicolai Burleaev, who harshly criticized the idea of organizing such a film festival. The comments of the former chief of the city cultural committee, Nicolai Burov, who stated that city authorities will not support, nor impede the organization of the event, added fuel to the flames. It is worth mentioning that the position of the organizers was hardly mentioned in the media, if the journalists asked for comments, they asked those people who are known as activists, even if they had nothing to do with the organization of the festival.

Various crimes related to LGBT were also a popular subject. Here we can mention the two gays from St. Petersburg who shot themselves, the owner of a gay porn site who was killed and the story of the former boxer who killed a young man, allegedly because he committed a violent sexual attack against his step son. Many of those reports, especially the last ones, supported the stereotype of pedophilia in LGBT community, creating an unhealthy climate around LGBT. In fact, the expression “pedophile-homosexual” is quite commonly used. “Moskovskii Komsomolets” even published an article with the title “The north capital is being terrorized by maniacs-homosexuals”

The festival “EuroPride’08” (August 2008, Stockholm)—a European event attended by 50,000 people, was practically ignored by the media.

Despite the fact that, for the first time, a Russian organization was invited to participate in the festival and that during the event special attention was paid to the situation in Russia—a round table was organized on the subject. Only the radio station “Echo Moskvi” mentioned the event in one of the shows.

### 2.8.3. The characterization of mass media

The main conclusion that can be made based on the analysis of publications is that “serious” mass media practically do not pay attention to LGBT issues, reports on LGBT are mainly published by the so called “zhyoltaya pressa” (yellow press): the tabloids, radio and TV programs covering “scandals, intrigues and investigations.”

Among the leaders regarding the coverage of LGBT subjects are “Komsomolskaya Pravda,” “Moskovskii Komsomolets,” NTV channel, “Tvoy Deni.” The first two newspapers have an extremely large circulation and high ratings and are available almost to all categories of readers. The audience of NTV channel exceeds 120 million people and scandal programs have the highest rating.

### 2.8.4. Stereotypes

Most of the publications riddled with various stereotyped judgments, usually erroneous. Let’s talk about a few of them.

One of the most common judgments that we can see in the media is the idea that “being gay is trendy.” This opinion can be often seen in various materials, whether intentionally or accidentally used.

Another common opinion—“homosexuality is synonym of perverseness and immoral behavior.” Usually the intimate part of homosexual relations is emphasized.

Journalists still attribute femininity to gay people, saying they are woman-like and wear women’s clothes.

One of the programs of the federal TV channel contained the following idea: *“The veterans of previous gay-prides come here with their own ammunition. Here men try on banners instead of sarongs, scarves. It’s a lot of fun.”*

Many comments, for various reasons, show a negative attitude supported by the thesis that homosexuality negatively affects demography.

Often in the context of “good—bad” contraposition, heterosexuality is opposed to homosexuality. From time to time, declarations of people concerned about their children and their sexuality are published. The opinion that one can contract homosexuality is wide spread and circulated.

Homosexuality is often perceived as a synonym of pedophilia. From time to time, both the titles and the texts in the tabloids point that out. Furthermore, the journalists of the tabloids give a lot of colorful “examples.”

The commentators do not forget about “propaganda of homosexuality” and “the blue mafia” either. These expressions are also quite common.

Generally, the articles are accompanied by scandalous, colorful photographs and the TV materials contain corresponding images, which fully illustrate and even deeper stuff the stereotypes existing in the society, inoculating the viewers the idea about the preternatural sexual orientation of LGBT.

Quite often prostitution, sexual and mental disorders are mentioned along with LGBT.

### 2.8.5. The most common errors

Most of the errors committed by journalists are caused by insufficient knowledge about LGBT issues. In fact, journalists talk about one event or another, without actually knowing much and then rely on their own understanding of the subject, which is often erroneous, as well as on common stereotypes.

It is enough to say the journalists are even spelling the acronym LGBT in a wrong way. Usually, the transgenders are the most affected, being called transvestites, or travesty. Sometimes, amusing incidents happen, when journalists are making conclusions about their characters' sexual orientation.

### 2.8.6. Hate speech

A part of the materials published during the analyzed period contained the so called "hate speech." Generally, these are the articles on criminal subjects. For example, if the subject is about a raped boy, the suspect is groundlessly called "pedophile-homosexual," as for example in the report of the "ROSBALT" news agency: "In Petersburg, a pedophile-homosexual raped an eighth grader." The header to a report about the situation is Israel of the main news program of NTV channel contained the following statement: "*This is a rare reason which brings orthodox Jews together with orthodox Muslims and Christians. Half naked minorities next to religious sanctuaries—make a lot of people angry.*" This is an obvious example of biased coverage of a subject, intentionally stirring a negative reaction of the viewer towards LGBT.

In general, the media obviously overuses the expression "sexual minority." Every word in this report opposes LGBT to "healthy society," fact that only contributes to promotion of homophobia.

The straight-from-the-shoulder headlines of periodicals also provide reasons for judgments. For example, "Petersburg against the film of sexual minorities"—another contraposition, which actually does not correspond to the reality, since there was no expression of citizens' will or an official decision of the authorities regarding the festival. However, the homophobic charge is obvious.

We have to say that the homophobic position is quite well represented in the media. Journalists are not shy in using expression like "perverts," "sick people," "sickness" etc.

### 2.8.7. Propaganda

An example of homophobic propaganda is the report broadcast in the spring of 2008 during the news program of a regional radio station. The journalist turned it into five minutes of hatred.

**The presenter.** An artist in Russia is more than an artist. He is the promoter of a certain ideology. And often of a specific orientation. It would be an exaggeration to say that the arrival of Boris Moiseiev broke the peace of Omsk. But we can't say that it was left unnoticed. His numerous fans gathered in front of the circus to greet the singer of "the Blue Moon." They carried placards stating "URF (Union of Right Forces) the party of the majority, ready to protect the minority," "From freedom in love to a free country. URF for freedom." In an hour the square was invaded by people who, to put it mildly, do not quite like the art of Moiseiev.

**Anton Klimenko.** Actually it perverts society and good morals.

**Tatiana Volkova.** I have a son and for that reason I am against gay culture, I am raising a child and I am worried about his future. Gay culture is evil.

**The presenter.** Boris Moiseiev said that his concert was a Valentine's Day present for the people of Omsk. A Trojan horse for you. This is how the representatives of the irreconcilable society called the concert. Among these—Cossacks from Omsk, who are ready to fight against the promoters of bohemian culture with the sword in their hands, for what can be good in Moscow, in Siberia is against human nature. But the Cossacks were not the only ones to share that opinion. The participants in the meeting against promotion of gay-culture in Russia agreed—immorality is against the culture, the history of our country and against the traditions of family education. If the situation was different, there would have been no Russia, or Russia would now be very different. So you better “let the sleeping dogs lie.”

**Valentina Voloshkina.** I came here, to protest against gay-culture in our town, because I am worried about my grandchildren and I want a town free of bad things, free of evil, of the culture promoted by Moiseiev.

**Victor Mutovin.** We do not agree with the culture promoted by Moiseiev. We do not agree with the lifestyle he proposes. We are not against him as a person; we are against the culture he brings.

**The presenter.** Russia loses 700 thousand people every year—the population of a middle size town. And the artist promoting same sex love by means of his stage image does not deserve the title of national artist. Vladimir Putin did not openly say that, but this was approximately his message. For the first time the annoying journalists asked him about “that” during the yearly press conference.

**Vladimir Putin.** My attitude towards gay-prides and sexual minorities is simple and is related to my professional obligations and to the fact that one of the biggest problems of our country is the demographic one...

**The presenter.** An ideology which changes orientation. Entertainment resembles politics in a way. The openness of Russia to all western influences is associated today with a true phobia of the parents: what if their beloved child will not become interested in a person of the opposite sex but in these oversea gimmicks. That is why the funny question about who is behind Boris Moiseiev does not seem so funny to the parents. They perceive entertainment as the carrier of the bohemian virus that one can contract just by going to a concert.

As another example we can mention the article “Why is the planet getting bluer?” published in the magazine “Sobesednik” in July 2008. Starting from the issue of gay-scandals in Orthodox Church, they continue by “analyzing” the situation, turning to a psychiatrist for advice. The overall biased attitude of the article is emphasized by expressions like “statistics are merciless,” “blue epidemic,” “the crawling hydra of sexual counterrevolution,” homosexuality is being compared to cannibalism etc. They also use the favorite trick of asking for “expert opinions,” for example of a psychiatrist or a psychologist. Statements which relate sexual orientation to rape are published.

In July “Moskovskii Komsomolets” also published an article about the gay-pride in Berlin. The author listed the participants in the gay-pride: *“Fetishists, sadomasochists, transsexuals—they all invaded the central streets of Berlin, in order to show the city their pride- in the proper and figurative way.”* The article abounding with stereotyped judgments and inventions, contains all signs of hate speech: *“The many kilometers long parade of dancing painted gays marched across the Potsdam square to the Victory Stela. From six p.m. till midnight the love birds drank danced and even organized orgies.”*

*“In Russia they are right to forbid gay-prides,-declares the student of the Free University of Berlin, Valentina Perevedentseva, who is from Nizhny Novgorod.—If the human kind wants to survive and continue its evolution, it should not support such forms of social relations. After all, it just not esthetic, it is unpleasant to watch these people.”*

---

*“During that day, it was impossible to distinguish in Berlin who was a woman and who was a man- the big breasted hottie on high hills was actually a transsexual, while the muscular, shaved boxer—a woman-lesbian.”*

*“The party lasted long into the night. Even the storm could not cool the couples—some of them started enjoying their love right there in the bushes of Tirgarten park. The love birds did not settle down until dawn.”*

### 3. CONCLUSIONS AND RECOMMENDATIONS

1. Discrimination based on sexual orientation and gender identity, as a component of the general xenophobia issue in modern Russia, represents a serious social threat along with the discrimination based on race, ethnicity or other reasons. First of all, it results in the exclusion of millions of people—people with homosexual and bisexual orientation and transgenders—form a full social life, it endangers their lives and health and affects their human dignity. Second of all, the tolerant attitude of the government and the society towards such discrimination contributes to the legitimacy of neo-Nazism and religious fundamentalism, as well as to the activation of organizations, which are openly violating public peace in Russia.

2. The assessment of the activity of the Council of Europe, as well as of the European Court for Human Rights reveals the fact that a series of cases regulated by Russian legislation in accordance with decisions made on the international level (decriminalization of non-forced homosexual relations, uniformization of the age of consent to homo- and heterosexual relations, the possibility to change the birth certificate and passport of a transsexual etc.). However, there is still room for improvement of the Russian legislation in relation to other issues discussed on an international level (parental rights of homosexuals, consolidation of the principle of non-discrimination based on sexual orientation and gender identity etc.)

3. The law enforcement and court systems do not provide sufficient protection for homosexuals and transgenders from infringement on their lives and health. Aggressive homophobia and transphobia is one of the common reasons of crimes against personality (including very serious ones). Meanwhile, the law enforcement structures do not take any measures for prevention of crimes based on homophobia and transphobia.

Moreover, police officers are often the ones to display prejudice and negative attitude towards homosexuals, who are victims of criminal attacks. This leads to the situation when the victims of crimes based on homophobia and transphobia prefer not to report to law enforcement structures and courts and the perpetrators remain unpunished.

The state needs to ensure that an active criminal investigation is carried out in each case of infringement on the live and health of people because of their sexual orientation and gender identity, both by law enforcement officers and by other people and groups and, if there is enough evidence, to make sure the perpetrators face charges, are trailed and punished.

The state needs to take all legislative, administrative and other necessary measures in order not to allow the use of sexual orientation and gender identity of victims as a reason or justification for acquittal and reduction of the seriousness of crimes committed against them.

It is imperatively necessary, to develop and implement government programs for prevention of crimes based on homophobia and transphobia and prevention of manifestations of homophobia and transphobia by law enforcement officers, prosecutor's office employees and judges, during the fulfillment of their professional obligations.

4. Despite the cancellation of criminal liability for voluntary homosexual relations between adult people, the process of decriminalization of homosexuality in Russia is still not completed. The attitude of police towards homosexuality leads to permanent continuation of aggression and crimes against gay and lesbian people on the part of law enforcement structures.

Under the pretext of operational-investigative measures they perform illegal apprehensions (both individual and mass apprehensions) of people, solely based on their actual or perceived homosexuality, they interfere with people's personal lives, collect personal information.

Investigation structures use the information about citizens' personal life in order to threaten, blackmail them and determine them to give the "right" declarations. The criminal procedures law contributes to such a situation. In the civilized world the recognition of the importance of close relationships between people is reflected in the provisions regarding the right not to testify against such people. However, the Criminal Procedures Code of the Russian Federation, establishing the grounds of the legal status of the witness as participant of criminal proceedings, stipulates, as one of the rights of the witness, the right to refuse to testify against himself, his-her spouse and other close relatives, which are listed in p. 4 art. 5 of the Criminal Procedures Code of the RF.

Despite the cancellation back in 1993 of criminal liability for voluntary sexual relations between adult men, people who were convicted based on art. 121 of the Criminal Code of RSFSR are still not rehabilitated. The introduction of this provision in the criminal law was obviously based on political and ideological reasons. Thus, people convicted in USSR for "sodomy" should be recognized as victims of political repressions. It is not only a formal obligation, but also a moral obligation of the state.

Moreover, the state must take a number of legislative and administrative measures that would allow:

- Taking into account, when bringing criminal-procedural actions, the specifics of relationships between people of the same sex;
- Ensuring respect and inviolability of citizens' personal life, notwithstanding their sexual orientation and gender identity;
- Guaranteeing the right of every person to independently decide when, whom and how to disclose the information about his/her sexual orientation or gender identity, as well as protection against illegal or unauthorized disclosure or threats with disclosing such information to third parties.

5. Russian government prefers to ignore and keep quiet about the problem of discrimination based on sexual orientation and gender identity. With such an attitude of the government, the problem cannot be solved. Thus, in annual reports of the Representative of the RF on human rights, the violation of rights and discrimination of sexual minorities was never mentioned, despite the fact that corresponding materials were sent to him many times.

Sexual orientation and gender identity are not included in the list of prohibited reasons for discrimination, provided for by criminal, labor and civil legislation. This creates the situation when homosexuals and transgenders practically cannot count on effective court defense of their rights and when discrimination and instigation to discrimination, instigation to violence towards citizens because of their sexual orientation and gender identity remain unpunished most of the times.

Prosecutor's office regularly refuses to open a criminal file in relation to instigation to hatred and call for violence towards gay people, saying that homosexuals are not "a social group."

The state must, finally, recognize the existence of the issue of discrimination based on sexual orientation and gender identity and take measures for the dissemination of the non-discrimination principle, established in the international law and in the constitution of the RF, notwithstanding people's sexual orientation and gender identity.

It is necessary to include sexual orientation and gender identity in the list of prohibited reasons for discrimination in the corresponding legal documents, including by means of amendments and additions.

According to the general meaning of article 19 of the Constitution of the RF, when making decisions, the courts must not allow for the limitation of rights and freedoms of citizens because of their sexual orientation and gender identity. It also refers to prosecutor's supervision of law enforcement.

Measures must be taken to prohibit and eradicate prejudice based on sexual orientation and gender identity at every stage of civil, criminal and other judicial or administrative proceedings, related to the determination of rights and obligations of people. It should be unacceptable, as well, for the authority or the role of anyone as a party to a trial, witness, expert, lawyer or decision making person, to be diminished because of their sexual orientation or gender identity.

It is necessary to organize training and education programs for judges, court clerks, prosecutors and others, aimed at clarifying international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

6. General grounds establishing the possibility and the procedures of gender reassignment have been set in the Russian legislation. However, here there are also a number of deficiencies: art. 70 of the Federal Law "On State Registration Documents" does not provide only documents regarding gender reassignment, issued by medical institutions, but a document of a specific form. So far, such form was not approved, in practice however, there are situations when the Marriage Registration Offices do not recognize the document, issued by the medical institution, as grounds for modification of civil state documents.

7. A number of politicians do not give up the attempt to introduce criminal liability for the so called propaganda of homosexuality, defined as "public manifestations of homosexual lifestyle and homosexual orientation." Despite the fact that the government previously pointed out in its decisions to the fact that such provisions are against the Constitution of the Russian Federation, in 2008 a similar Draft law was again introduced in the State Duma.

Despite the fact that the notion "propaganda of homosexuality" is not introduced in the legislation, it is actively used in law enforcement practice. On these illegal basis the prosecutor's office issues warnings to mass media, the structures of the Ministry of Justice refuse to register public associations. This notion is also actively used by public people for the stigmatization of homosexuals.

The use of the notion "propaganda of homosexuality" in practice means nothing else than violation of the freedom of speech, guaranteed by the ECHR and the Constitution of the RF. It should be taken into account that freedom of speech also refers to the freedom to express unpopular opinions, requiring pluralism, tolerance and open-mindedness, without which a democratic society cannot exist. Many emotional and esthetic aspects of world perception characteristic to homo- and bisexuals may be unfamiliar to the heterosexual majority. However, this cannot be the reason for limitation of freedom of speech.

The state must take measures in order not to allow the use of the notion "propaganda of homosexuality" in law enforcement practice, to exclude it from legislative documents of the subjects of the Russian Federation and official documents.

The state has the obligation to apply legislative, administrative and other measures with the purpose of ensuring full exercise of the freedom of opinion and freedom to express it, taking into account the rights and freedoms of other people and without discrimination based on sexual orientation and gender identity. It includes the right to receive and transmit information and ideas, related to sexual orientation and gender identity, as well as to speak about legal rights related to them, publish materials, broadcast, organize conferences and participate in them, as well as disseminate information about safe sexual behavior and access such information.

8. Russian homosexuals and transgenders have to face discrimination at their workplace and when trying to get employment. The gays and lesbians who work (or want to work) in government institutions and organizations, as well as in the education system are the most vulnerable. The respondents interviewed during the monitoring repeatedly talked about the practice of verifying the “normality” of personal life of citizens to be employed with state services. If the management of the institution finds out about an employee’s homosexuality, it often takes measures to get rid of that employee.

The state must take all legislative, administrative and other necessary measures in order to eradicate and prohibit discrimination based on sexual orientation and gender identity in the employment in state and private sector, including professional training, recruitment of employees, promotion, dismissal, terms of the labor agreement and remuneration.

Special attention should be paid to state services and education system. It is necessary to provide equal opportunities for employment in state services and promotion in all government bodies, law enforcement bodies and army structures and education institutions. The development of corresponding training and education programs, aimed at overcoming discriminatory attitude, is very important.

9. Currently the LGBT community is practically deprived of the possibility to organize public manifestations, including cultural ones. Without any legal grounds for interdictions, the government bodies use rough administrative pressure on public associations and private companies.

Every person has the right to freely participate in cultural life, notwithstanding his sexual orientation and gender identity, as well as to express, by means of such participation, the diversity of sexual orientation and gender identity. The state, for the purpose of keeping civil peace and harmony in the society, should contribute to the dialogue between representatives of different culture groups and mutual respect among them, including groups with different opinions regarding sexual orientation and gender identity.

10. Peaceful marches and pickets supporting equal rights, initiated by LGBT activists are subjected to open interdictions on the part of local government. The attempts to organize such a march in Moscow and other cities ended with the apprehension of participants and administrative charges for invented reasons.

Peaceful demonstrations are one of civilized means of expression of people’s opinions, including those which determine ambiguous reactions in the society. The state has the obligation to respect the right of the citizens to peaceful demonstrations, including related to issues of sexual orientation and gender identity.

From the point of view of modern international law standards it is unacceptable to use the notions of national security, public order, health or morality of the population for any kind of limitation of the right to peaceful assembly and association, just based on the reason that such a right is exercised with the purpose of affirming the diversity of sexual orientation and gender identity.

11. All the attempts of LGBT organizations (Radujny Dom, Favorite) to be registered by the state. Responsible officers, both in official documents and in the media motivate the refusal by the fact that “propaganda of homosexuality” and the presence of homosexuals and transgenders in public places is unacceptable.

The establishment and registration of associations without discrimination based on sexual orientation and gender identity does not represent any danger for the society and the state. On the contrary, the creation of public associations will contribute to the realization of the rights and legal interests of citizens.

The state must take measures to eradicate existing administrative impediments and not allow creation of new impediments to the establishment, state registration and activity of public associations and other forms of non-commercial organizations, aiming at disseminating information among people of different sexual orientation and gender identity, dissemination of information about such people, contribution to the communication of such people and protection of their rights.

**RECOMMENDATION CM/REC(2010)5  
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES  
ON MEASURES TO COMBAT DISCRIMINATION ON GROUNDS  
OF SEXUAL ORIENTATION OR GENDER IDENTITY**

*(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting  
of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;

Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as “the Convention”) and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family—including criminalisation, marginalisation, social exclusion and violence—on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights (“hereinafter referred to as “the Court”) and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on “Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons”;

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and “deprivation of economic, social and cultural rights, including the right to health”;

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

*Appendix to Recommendation CM/Rec(2010)5***I. Right to life, security and protection from violence****A. "Hate crimes" and other hate-motivated incidents**

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

**B. "Hate speech"**

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons

whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

## **II. Freedom of association**

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

## **III. Freedom of expression and peaceful assembly**

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals

to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

#### **IV. Right to respect for private and family life**

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their re-assigned sex is effectively guaranteed.

23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits

single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

### **V. Employment**

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

### **VI. Education**

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

### **VII. Health**

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical

curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

### **VIII. Housing**

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

### **IX. Sports**

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

### **X. Right to seek asylum**

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

### **XI. National human rights structures**

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as—as far as national law so provides—examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

### **XII. Discrimination on multiple grounds**

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.



Бум. офсетная. Формат 70×100/16. Тираж 1000 экз.  
Московская Хельсинкская группа. 107045, Москва, Б. Головин пер., д. 22, стр. 1.  
Тел./факс (495) 607-6069. E-mail: [mhg-main@umail.ru](mailto:mhg-main@umail.ru). Адрес в Интернете: [www.mhg.ru](http://www.mhg.ru).  
Отпечатано ООО «ЛБ-Контракт» по заказу Московской Хельсинкской группы. 2010 год.  
Распространяется бесплатно.